

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 5, 2013

Agenda Item 5

SUBJECT: Woody's Wharf Use Permit - (PA2011-055)
2318 Newport Boulevard
▪ Conditional Use Permit No. UP2011-010
▪ Variance No. VA2013-006

APPLICANT: Martin Potts, MPA, Inc., on behalf of Woody's Wharf Restaurant

PLANNER: Brenda Wisneski, AICP, Deputy Community Development Director
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PROJECT SUMMARY

Reconsideration of an application to amend a use permit to change the operational characteristics of an existing restaurant. The requested amendment includes: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. A variance is also requested to allow a proposed patio cover to encroach into the required bulkhead setback.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. _____ approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006 (Attachment No. PC 1), to:
 - 1) allow the proposed patio cover to encroach into the bulkhead setback;
 - 2) extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., daily;
 - 3) require the use of the valet parking on an as-needed basis only; and
 - 4) waiver of a portion of the required parking.

But denying the request to allow changes to the restaurant operation and use of the outdoor dining area, that include:

- 1) the introduction of patron dancing within the interior of the restaurant; and
- 2) removing tables and chairs within the outdoor dining area.



LOCATION	GENERAL PLAN and COASTAL LAND USE PLAN	ZONING	CURRENT USE
ON-SITE	MU-W2 (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Woody's Wharf Restaurant
NORTH and SOUTH	MU-W2 and MU-W (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Restaurant, with Commercial and Residential Uses Beyond To the South - Commercial Buildings (Vacant)
EAST	The Rhine Channel and CM (Marine Comm) and RM (Multi-Unit Residential)	The Rhine Channel and CM (Marine Commercial) and RM (Multi-Unit Residential)	The Rhine and Lido Peninsula Beyond
WEST	Public Right-of-Way with Municipal Parking Lot and R-1 (Single-Unit Residential)	Municipal Parking Lot and R-1 (Single-Unit Residential) beyond	Municipal Parking lots and Residential Uses Beyond

INTRODUCTION

Project Setting

The restaurant is located on the east side of Newport Boulevard between 24th and 26th Streets overlooking the Rhine Channel. The property is comprised of three lots with a total area of approximately 13,260 square feet, with a commercial building which crosses the interior property lines. The restaurant has been in operation since 1965 and offers live entertainment. The restaurant building measures approximately 3,305 square feet with 1,173 square feet of interior dining area and a 709 square foot outdoor dining area. There are 26 on-site parking spaces (6 spaces are tandem in accordance with the valet parking plan). The site plan and floor plans are depicted in Attachment PC7. The project provides dock space for approximately eight (8) boats on the Rhine Channel, available for patrons who choose to take a boat to the restaurant.

Background

The subject use permit amendment was partially approved by the Planning Commission on November 8, 2012. The applicant appealed the decision to the City Council. However, before the appeal could be considered, the applicant stated the intent to modify the application to include a patio cover to address concerns related to noise. The proposed cover would require a variance to allow it to encroach into the bulkhead setback. Because application was modified, on March 12, 2103 the City Council requested the Planning Commission reconsider the application.

The applicant's original use permit application requested changes to the operation of the restaurant to include:

- 1) the introduction of patron dancing within the interior of the restaurant;
- 2) removing tables and chairs within the restaurant and the outdoor dining area on an as-needed basis;
- 3) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily;
- 4) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily;
- 5) the use of the valet parking on an as-needed basis; and
- 6) waiver of a portion of the required parking.

On November 8, 2012, the Planning Commission, approved a portion of the original request which included:

- 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily;
- 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights;
- 3) the use of the valet parking on an as-needed basis; and
- 4) waiver of a portion of the required parking.

The portion of the application that was denied included:

- 1) the introduction of patron dancing within the interior of the restaurant;
- 2) removing tables and chairs within the outdoor dining area; and
- 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

The approved resolution, staff report and minutes related to the November 8, 2012 hearing are provided as Attachments PC 4. That staff report provides detailed entitlement history and related background. The attachments to the November 8, 2012 staff report can be accessed on the City's website at <http://www.newportbeachca.gov/index.aspx?page=1328>.

The applicant's letter of justification appealing the Planning Commission's decision is provided as Attachment PC 3. The appeal raises issues related to dancing, hours of operation of the outdoor dining area, proposed changes to conditions of approval approved by the Planning Commission, and noise, as items that need further discussion and consideration.

Project Description

The applicant maintains its original request to amend the use permit, but has modified the application to construct a patio cover on the rear patio. A variance is required because for patio cover to encroach 10-feet into the 10-foot bulkhead setback. A canvas canopy is currently used during the wintertime. The proposed canopy would be a permanent installation and would include retractable panels. As shown in the proposed plans provided as Attachment PC 8, the features of the canopy include multi-layer polycarbonate canopy panels and laminated glass windscreen which would be extended to the bottom of the canopy.

DISCUSSION

The request for the patio cover and its potential to mitigate noise is the only condition which has changed since the Planning Commission's action on November 8, 2012. Therefore, the recommended action is consistent with the Planning Commission's November 2012 decision with the exception of the patio area. The applicant has modified its proposal which affects the outside patio, therefore reconsideration of the requested hours of operation is warranted.

Analysis

General Plan/CLUP/Zoning

The Land Use Element of the General Plan and the Coastal Land Use Plan (CLUP) designate the site and the adjacent properties as Mixed Use- Water Related (MU-W2 and MU-W, respectively). The project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. Furthermore, Land

Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses. The existing eating and drinking establishment is located in MU-W2 (Mixed-Use Water Related) Zoning District and is consistent with the land uses intended for properties fronting Newport Boulevard within McFadden Square/Cannery Village neighborhood.

Noise Analysis

A noise measurement survey was conducted by an acoustical engineer represented by the applicant on Friday, December 21, 2012. Six locations in the area surrounding the subject business were monitored in the late evening hours when the area was active and the outdoor patio appeared to be "at capacity". This survey was reviewed and additional noise measurements were conducted by an acoustical engineering retained by the City to confirm the accuracy of the conclusions. The City's survey was conducted on Friday, July 19, 2103, also when the area was active and the patio was fully occupied. Both studies are provided at Attachment PC 6.

Both studies provided similar conclusions which are summarized below:

1. Noise levels along Newport Boulevard and adjacent residences can be loud, sometimes in the upper 60 dBA range.
2. Noise levels at the mixed-use development can exceed the nighttime noise standard of 50 dBA, but the sources of noise are pedestrians, dock activity, traffic, and other businesses. The noise sources were not attributed to Woody's.
3. Woody's noise did not contribute to the total noise environment, therefore noise from Woody's had to be less than 50 dBA (Leq).
4. The proposed patio structure would significantly reduce noise from the patio area.
5. Operation of the outdoor patio will remain below the Noise ordinance criteria at the mixed use developments to the north and south.

The noise studies were conducted during different times of the year which confirmed that noise levels in the area exceed the noise standard when pedestrian and harbor activity is high and surrounding businesses are at full capacity. Both studies also confirm that a variety of noise sources contribute to the loud environment. During the monitoring periods, it was determined that Woody's was not the cause of the noise levels.

Outdoor Patio

The existing Use Permit does not specify hours of operation for the restaurant, however, the 2:00 a.m. closing hour is currently regulated by the Department of Alcoholic Beverage Control (ABC). The Outdoor Dining Permit, however, limits use the outdoor patio to 11:00 p.m. The applicant requests to extend the hours of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily.

The outdoor dining area is located outside of the main dining room and measures 709 square feet. The approved outdoor dining area plans show tables and seating for 66 persons. The removal of a portion of the tables and chairs as proposed will provide standing area for patrons of approximately 400 square feet and will result in an increase in the number of patrons that will occupy the space. The increase in the number of patrons will increase ambient noise levels of patio area and increase the number of patrons and employees entering and exiting the building.

It was determined by the Planning Commission at its November 8, 2013 meeting that extending closing hour and increasing the occupancy of the outdoor dining area would adversely impact the neighboring properties and residential occupants that have raised objections and complaints. Therefore, the Planning Commission's action maintained closing the outdoor dining area at 11:00 p.m., but allowing use of the patio until midnight on Friday and Saturday nights.

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations and outdoor dining:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The noise surveys indicate the current use of the outdoor patio does not contribute to the noise levels in the surrounding area, nor at the adjacent mixed use developments to the north and south. The acoustical engineers also confirm the proposed patio cover would significantly reduce the noise emitted from the patio. Regardless of the noise study results, complaints from local residents stating that the patio is a significant noise source should also be considered. Therefore, it recommended that the patio cover be constructed and if it is demonstrated that the noise levels generated from the use of the patio are reduced to acceptable levels, then extending the hours to 2:00 a.m. would be acceptable. Conditions of approval 27 and 28 require verification of the patio cover's effectiveness.

The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along Newport Boulevard; however, this portion of roadway is not a major residential road, so disturbances to residents related to traffic are not expected to occur.

An amendment to the Use Permit requires the applicant to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control

of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with a means to modify, suspend, or revoke the operator's ability to maintain late-hour operations. Many of the conditions that will be included in the Operator's License will be the same conditions imposed by the use permit. The Operator's License is a tool that the Police Department can utilize to enforce the conditions of approval of the use permit.

Variance Findings

The existing building and outdoor patio are located at the existing bulkhead, while the Zoning Code requires a 10-foot setback. Therefore, the patio cover would also be required to encroach into the setback. Section 20.52.090.F (Variances, Findings and Decision) of the Zoning Code requires the Planning Commission to make the following findings before approving a variance:

- A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*
- B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*
- C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*
- D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*
- E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and*
- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

The objective of the application is to construct a cover on the existing patio. The layout of the existing structure and patio necessitate locating the cover within the setback area. The patio is 30-feet deep. If the patio cover maintained the required 10-foot setback, only 20-feet of the patio would be covered which would not be sufficient to reduce noise levels. The structure to the north is also located at the bulkhead, as depicted in the site photos provided as Attachment PC 7. Since the cover would be located over an existing patio it would not be consistent with the setback of the patio, as well as the existing building.

Summary

As stated above and in correspondences, the restaurant operation has generated a significant amount of complaints related to noise. The applicant proposes a patio cover which will reduce the noise generated by patrons on the outdoor patio, as indicated by two acoustical engineers. Maintaining no more than 66 seats in the outdoor dining area and requiring all doors and windows to be closed should also limit the noise. Therefore, allowing the outdoor area to be occupied to 2:00 a.m., consistent with the hours of the indoor area, is recommended.

Staff recommends Planning Commission adopt the draft resolution approving Use Permit No. UP2011-010 (PA2011-055) and Variance No. VA2013-006, to allow:

- 1) the proposed patio cover to encroach into the bulkhead setback;
- 2) extend the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily;
- 3) the use of the valet parking on an as-needed basis; and
- 4) waiver of a portion of the required parking.

But denying the request to allow changes to the restaurant operation and use of the outdoor dining area, that include:

- 1) the introduction of patron dancing within the interior of the restaurant; and
- 2) removing tables and chairs within the outdoor dining area.

Alternatives

Potential alternatives actions the Planning Commission may be consider include, but are not limited to:

1. Maintain action approved on November 8, 2012 and deny the variance (see draft resolution Attachment PC 2;
2. Modify the recommended action to change the business operations; or
3. Continue the public to allow the applicant additional time to resolve issues that have been raised at the public hearing.

Environmental Review


The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval
- PC 2 Draft Resolution to Approve UP but Deny Variance
- PC 3 Applicant's Correspondences
- PC 4 PC Resolution, staff report and minutes, dated November 8, 2012
- PC 5 Police Department Recommendation and Alcohol Related Statistics
- PC 6 Noise Studies
- PC 7 Site Photos
- PC 8 Project Plans- Site Plan, Floor Plan and Patio Cover

Attachment No. PC 1

Draft Resolution for Approval

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 AND VARIANCE NO. VA2013-006 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA, WAIVER OF SIX PARKING SPACES, AND ALLOW A PATIO COVER TO ENCROACH INTO THE BULKHEAD SETBACK; BUT DENY A CHANGE TO OUTDOOR SEATING PLAN AND THE ADDITION OF PATRON DANCING; AND SUPERSEDING USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. An application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. On July 11, 2013 an application was submitted to request a variance to construct a patio cover on the existing patio which would encroach into the bulkhead setback.
4. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
6. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.

7. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
8. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.
11. In accordance with the Newport Beach Municipal Code, on November 8, 2012 the Planning Commission conducted a public hearing and approved: 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily; 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights; 3) the use of the valet parking on an as-needed basis; and 4) waiver of a portion of the required parking. The portion of the application that was denied included: 1) the introduction of patron dancing within the interior of the restaurant; 2) removing tables and chairs within the outdoor dining area; and 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.
12. On November 26, 2012, the project applicant filed an application and letter of justification appealing the Planning Commission's decision. The City Council considered the appeal at a public hearing on March 12, 2013 and requested the Planning Commission reconsider the item on the basis that the applicant modified the application following the Planning Commission's decision.
13. A public hearing was held on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.

2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS – USE PERMIT.

In accordance with Sections 20.48.030 (Alcohol Sales) and 20.52.020 (Conditional Use Permit) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPD) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

- B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.
- B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.
- B-3. The subject property is not part of a specific plan area.

Finding:

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

- C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit.
- C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.
- C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m.
- C-4. As conditioned, the proposed patio cover shall be constructed in accordance with the submitted plans and tested to confirm the expected noise reduction is provided prior to use of the outdoor patio beyond 11:00 p.m.

Finding:

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. As conditioned, the approved seating plan shall be maintained on the basis that the removal of table and chairs from the outdoor dining area increases the number of patrons in this area and likely to result in increased noise levels that will adversely impact nearby properties and residential occupants.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The existing outdoor dining patio is surrounded by glass walls which aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received.
- D-5. The effectiveness of the proposed patio cover has been evaluated by two acoustical engineers who indicate it will significantly reduce the noise levels from the patio area.
- D-6. Construction of the proposed patio cover will significantly reduce noise from the patio area to levels well below the Noise Ordinance criteria at the existing mixed use residences to the north and the future residences to the south. Therefore, extending the closing hour to 2:00 a.m. will not adversely impact nearby properties and residential occupants into the late night hours, and is a compatible activity for the neighborhood.
- D-7. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building.
- D-8. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-9. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-

needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. The proposed patio cover will significant reduce noise levels from the patio area and will remain within the Noise Ordinance criteria. Since the applicant has presented a physical barriers to mitigate existing or anticipated increase in noise levels associated with late night hours, an extension of the outdoor patio hours to 2:00 a.m. is justified.

F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPd in order to accommodate the proposed closing hour beyond 11:00 p.m. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPd with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. REQUIRED FINDINGS – VARIANCE.

In accordance with Section 20.52.090 (Variance) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

A-1. The location of the subject property is unique in that it is located on the bay where a bulkhead exists. The patio cover is proposed to mitigate noise generated on an existing patio which encroaches into the 10-foot bulkhead setback. Covering the patio to implement the desired mitigation necessitates an encroachment into the bulkhead setback.

Finding:

B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

B-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Finding:

C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

C-1. The applicant seeks to construct a patio cover to mitigate noise generated by the use of an existing outdoor patio. Allowing the cover to be constructed within the setback area is anticipated to reduce noise complaints and allow the patio area to be used until 2:00 a.m., daily. Without the patio cover in place, the outdoor area will be restricted to 11:00 p.m., daily.

Finding:

D. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

D-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Facts in Support of Finding:

Finding:

E. *Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

E-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Facts in Support of Finding:

Finding:

F. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

F-1. The encroachment would allow for a patio cover to encroach into the bulkhead setback. The patio cover is an accessory structure which will not extend the useful life of the primary structure.

SECTION 5. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit No. UP2011-010 and Variance No. VA2013-006, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of the outdoor dining area to 2:00 a.m.; but

deny the introduction of patron dancing to the restaurant and the removal of tables and/or chairs from the interior of the restaurant, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 and Variance No. VA 2013-006 shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant and outdoor dining area shall be limited to between 10:00 a.m. and 2:00 a.m., daily. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m., daily.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.*

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit and Variance may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.
20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.

21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *Prior to issuance of building permits, the construction plans and materials for the proposed patio cover shall be reviewed by an acoustical engineer retained by the City to verify the potential to mitigate the noise levels*

28. *Prior to certificate of occupancy for use of the outdoor patio beyond 11:00 p.m., an acoustical engineer retained by the City shall conduct noise measurements around the enclosure, at the property lines, and at the residential uses in the vicinity.*
29. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
30. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
31. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
32. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
33. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
34. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.*
35. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.
36. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
37. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
38. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done

in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

39. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
40. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
41. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
42. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
43. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
44. All exits shall remain free of obstructions and available for ingress and egress at all times.
45. Strict adherence to maximum occupancy limits is required.
46. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
47. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
48. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
49. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.

50. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
51. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
52. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.
53. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
54. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
55. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
56. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
57. *A modification is required to be filed with the Building Division, for compliance to Section 705.11 of the California Building Code.*
58. *Occupant Load shall be maintained at 164 Occupants total for all areas.*
59. *Accessibility upgrades shall be required pursuant to Section 1134.2.1 of the California Building Code.*
60. *Submit architectural and structural plans and calculations for plan review. Two (2) building permits shall be required for the installation of two awnings. Awnings shall meet the requirement for Class A roofing.*
61. *Awnings and canopies shall be designed and constructed to withstand wind or other lateral loads and live loads as required by California Building Code Chapter 31 Section 3105.3.*

62. Canopies shall be constructed with an approved covering that meets the fire propagation performance criteria of NFPA 701 or has a flame spread index not greater than 25 when tested in accordance with ASTM E 84 or UL 723 as per C.B.C Sec. 3105.4.
63. Occupant load and seating arrangement under new exterior awning area must meet California Building Code Chapter 10. These items will be reviewed at the time of plan check.
64. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010 and Variance No. VA2013-006. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Resolution for Approval of UP, Denial of
Variance

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA, WAIVER OF SIX PARKING SPACES, AND ALLOW A PATIO COVER TO ENCROACH INTO THE BULKHEAD SETBACK; BUT DENY A CHANGE TO OUTDOOR OPERATIONS, THE ADDITION OF PATRON DANCING AND VARIANCE NO. VA2013-006; AND SUPERSED USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. An application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. On July 11, 2013 an application was submitted to request a variance to construct a patio cover on the existing patio which would encroach into the bulkhead setback.
4. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
6. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.

7. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
8. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.
11. In accordance with the Newport Beach Municipal Code, on November 8, 2012 the Planning Commission conducted a public hearing and approved: 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily; 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights; 3) the use of the valet parking on an as-needed basis; and 4) waiver of a portion of the required parking. The portion of the application that was denied included: 1) the introduction of patron dancing within the interior of the restaurant; 2) removing tables and chairs within the outdoor dining area; and 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.
12. On November 26, 2012, the project applicant filed an application and letter of justification appealing the Planning Commission's decision. The City Council considered the appeal at a public hearing on March 12, 2013 and requested the Planning Commission reconsider the item on the basis that the applicant modified the application following the Planning Commission's decision.
13. A public hearing was held on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.

2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS – USE PERMIT.

In accordance with Sections 20.48.030 (Alcohol Sales) and 20.52.020 (Conditional Use Permit) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPD) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.

B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.

B-3. The subject property is not part of a specific plan area.

Finding:

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit.

C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.

C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m. and to extend the closing hour of the outdoor dining area to Midnight on Friday and Saturday, as proposed.

Finding:

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. As conditioned, the approved seating plan shall be maintained on the basis that the removal of table and chairs from the outdoor dining area increases the number of patrons in this area and likely to result in increased noise levels that will adversely impact nearby properties and residential occupants.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The existing outdoor dining patio is surrounded by glass walls which aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received.
- D-5. The extension of the closing hour to 2:00 a.m. in conjunction with the increased occupancy of the outdoor dining area, as proposed, is anticipated to result in noise levels that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
- D-6. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building.
- D-7. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-8. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. An increase in pedestrian and vehicular activity from patrons using the outdoor dining area during late night and early morning hours will not occur with the closing hour of 11:00 p.m. or Midnight, as recommended in this approval by staff. Since the applicant has not presented any additional physical barriers or other improvements to mitigate existing or anticipated increase in noise levels associated with increased number of patrons on the outdoor dining area.
- F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPD in order to accommodate the proposed closing hour beyond 11:00 p.m. The Operator License

will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPD with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. REQUIRED FINDINGS – VARIANCE.

In accordance with Section 20.52.090 (Variance) of the Newport Beach Municipal Code, the following finding and facts in denial of such finding is set forth:

Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Denial of Finding:

A-1.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Denial of Finding:

B-1.

Finding:

- C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Denial of Finding:

C-1.

Finding:

- D. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

D-1.

Facts in Denial of Finding:

Finding:

- E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

E-1.

Facts in Support of Finding:

Finding:

- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

F-1.

SECTION 5. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit No. UP2011-010, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of the outdoor dining area to 2:00 a.m.; but deny the introduction of patron dancing to the restaurant, the removal of tables and/or chairs from the interior of the restaurant and Variance No. VA2013-006, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. 2011-010 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant shall be limited to between 10:00 a.m. and 2:00 a.m., daily; the hours of operation of the outdoor dining area shall be limited to 10:00 a.m. to 11:00 p.m., Sunday through Thursday; and Midnight on Friday and Saturday nights. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m. daily. All service and occupancy of the outdoor dining area shall cease after 11:00 p.m., Sunday through Thursday and after Midnight on Friday and Saturday nights.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans*

PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.

20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.*
28. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
29. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
30. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
31. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
32. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
33. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPd). The procedures included in the plan and any recommendations made by the NBPd shall be implemented and adhered to for the life of the Conditional Use Permit.*
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.

35. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
36. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
37. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
38. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
39. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
40. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
41. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
42. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
43. All exits shall remain free of obstructions and available for ingress and egress at all times.
44. Strict adherence to maximum occupancy limits is required.
45. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
46. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the

certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

47. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
48. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
49. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
50. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
51. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.
52. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
53. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
54. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
55. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
56. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind

and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 3

Applicant's Correspondences

**WOODY'S WHARF
PROJECT DESCRIPTION, SUMMARY OF REQUESTED VARIANCE AND
LETTER OF JUSTIFICATION
June 26, 2013**

PROJECT DESCRIPTION

Woody's Wharf has been operating a successful restaurant and bar since 1965 and has become one of the iconic locations for dining with the local Newport Beach community.

BACKGROUND

The existing building and patio is positioned directly behind and adjacent to the existing bulkhead/seawall. According to Section 20.22.030, Mixed-Use Zoning Districts General Development Standards, MU-V, a 10' set back is required from the bulkhead. A variance will be required to construct a patio cover within this setback.

JUSTIFICATION

Pursuant to Section 20.52 of the Zoning Code, the Planning Commission is authorized to approve applications for a Variance, subject to making the following findings, provided by Section 20.52.090F:

- 1. There are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;**

The general design, size and operating characteristics have not materially changed since the restaurant initially opened in 1965 and is consistent with other eating and drinking establishments in the vicinity. In addition, the current Outdoor Dining Permit allows for an outdoor patio of 709 square feet. The proposed patio cover reflects compliance with this limitation.

- 2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity under an identical zoning classifications;**

Given that the existing building is situated within the required setback and neighboring buildings exist with the same encroachment, the proposed patio cover is an extension of the building and is not in excess of that enjoyed by other properties in the vicinity.

- 3. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;**

SCANNED

Woody's Wharf has been operating on its patio since its establishment in 1965. The proposed patio cover is intended to reduce the typical noises emanating from the patio operations, in an effort to minimize impacts to neighboring properties allowing the applicant to continue its present operations.

4. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;

Given that the existing building is situated within the required setback and neighboring buildings exist with the same encroachment, the proposed patio cover is an extension of the building and is consistent with that enjoyed by other properties in the vicinity.

5. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing in the neighborhood; and

Woody's Wharf has successfully been operating a restaurant at this location consistent with its Use Permit granted by the City of Newport Beach in 1965 and its Outdoor Dining Permit granted in 1983. It's goodwill to recognize neighbor concerns and work toward mitigating those concerns is clearly in the best interest of the public convenience, health, safety and general welfare of persons residing or working in the adjacent neighborhood.

6. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Woody's Wharf has been operating as a restaurant / bar at this location since 1965. This use is consistent with the General Plan.

The restaurant / bar use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and Municipal Code as amended by Use Permit No. 3065, approved on November 1, 1983 and amended on March 24, 1988.

Please reference Woody's Wharf Project Description, Summary of Requested Permit Modifications and Letter of Justification submitted to the City on March 22, 2011 and Amended Appeal Application, submitted to the City on February 26, 2013 attached hereto for further information regarding this Application.

August 21, 2012

Mr. Jay Garcia
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

RECEIVED BY
COMMUNITY

AUG 21 2012

DEVELOPMENT
CITY OF NEWPORT BEACH

RE: FINDINGS AND JUSTIFICATION FOR REQUEST FOR A CHANGE IN USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT - WOODY'S WHARF (2318 NEWPORT BOULEVARD) TO ALLOW AN EXISTING OUTDOOR DECK AREA TO REMAIN OPEN NIGHTLY TO 2:00 AM [CASE NO: USE PERMIT No. 3065 AND OUTDOOR DINING PERMIT No. 1]

Dear Jay:

On behalf of the Woody's Wharf, and in response to your letter dated July 24, 2012 and our subsequent conversations, we hereby submit to the City of Newport Beach the following Findings and Letter of Justification to amend Use Permit No. 3065. We are attaching a red-line copy of the proposed amended conditions of approval along with an accepted version for your use. Also included are the site plan and floor plans.

Project Setting

The project site is an existing restaurant building, Woody's Wharf, located at 2318 Newport Boulevard in Newport Beach, California. Surrounding land uses include restaurants to the north, the Rhine Channel to the east, a sales boat facility to the south and a municipal parking lot to the south and west. A shipyard and residential uses exist across the channel to the east.

Entitlement Background

Woody's Wharf was originally constructed in 1965 with a net public area (NPA) of 1,173 square feet. On November 10, 1983, the Planning Commission approved Use Permit No. 3065 to permit a 416 square foot increase in NPA allowing the use of the restaurant's patio area to be used for outdoor dining and drinking purposes.

Use Permit No. 3065 was amended in 1988 to extend the hours of the outdoor patio area.

Outdoor Dining Permit No. 1 was approved in 1995 to allow for the expansion of the outdoor dining area by 293 square feet for a total of 709 square feet of outdoor dining area.

On September 18, 2008, the Newport Beach Police Department met with Woody's Wharf and issued a statement that, "their Use Permit allows them to operate the outdoor patio until close. It is the outdoor "deck" that may not be utilized after 11:00 pm."

Project Description

The applicant (Woody's Wharf operator) proposes to continue its current business operations of the restaurant under the proposed amended conditions of approval, which combines the conditions contained in the previous City-approved Conditional Use Permit and Outdoor Dining Permit (attached). This request for a modification of the current use permit, generally includes amended conditions for (a) a clarification in the hours of operation of the outdoor patio until business closing or no later than 2:00 am, (b) maintain closing of the deck at 11:00 pm which deck is a completely separate part of the building, (c) indoor dancing nightly until closing confined to the interior of the building and (d) an adjustment in the occupant load for the building of 228 maximum occupants. All of these suggestions are consistent with the current operations of the restaurant.

Justification and Findings

Findings and justification for each of the criteria set forth in Section 20.52.020F of the Zoning Code is provided below.

1. *The use is consistent with the General Plan and any applicable specific plan.*

The granting of the applicant's request is consistent with the intent of the General Plan.

2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

The existing use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and Municipal Code.

3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity. This request for this amended Use Permit is to legitimize operations that have been on-going for decades at the restaurant. These operational characteristics are the same privileges which have been, and continue to be granted by the City of Newport Beach.

Woody's Wharf restaurant is irregular in shape. It is an L-shaped building, which was constructed over three lots (owned by a single landowner). Residents are located east across the Rhine Channel. Although these residents are located approximately 600 feet from the restaurant, noise levels from adjacent restaurants and businesses and those perceived being generated from Woody's Wharf carry across the channel.

Configuration of the building, its location adjacent to the channel and its sitting on three lots that are owned by a single landowner are special circumstances where strict compliance with the Municipal Code significantly limits the ability of the applicant to comply with its use restrictions relating to noise.

If there was a way for the City to approve the addition of an overhead structure above the patio to assist in the reduction of any noise level generated by the use of the patio, the applicant would consider constructing this type of mitigating enclosure. We understand the building codes will not allow construction of a building over a property line, however, given the existing building as constructed several years ago extends across a property line already, the proposed patio cover would extend across the same property line. This does not create any further violation than that which already existed when the building was first permitted and constructed. If, and when the Woody's Restaurant's lease expires and the building is demolished, the building codes could then be enforced with respect to not allowing a building to extend across a property line, eliminating all code violations.

4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and vehicle (e.g., fire and medical) access and public services and utilities.*

The configuration of the site and building is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and vehicle access and public services and utilities.

5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Granting of the change in the CUP is consistent with the current business operations of the restaurant. This change in the CUP will not be detrimental to the harmonious and orderly growth of the City, or otherwise constitute a hazard to the public convenience, health, safety, or general welfare of persons residing or working in the neighborhoods.

Properties adjacent to Woody's Wharf have the right of use and quiet enjoyment of their properties free from excess noise. The applicant maintains they are in compliance with the current City-permitted use restrictions, and much of the noise generated from the area is not contributed by Woody's Wharf. This can be evidenced by the reduction in noise related complaints which have been documented in the area since after several

nearby restaurant establishments have closed their businesses while Woody's Wharf has continued to operate.

Request

A request to combine and modify the conditions of approval under Use Permit No. 3065 and Outdoor Dining Permit No. 1 to be consistent with the restaurants current and ongoing operations. The attached proposed amended conditions of approval reflect modifications necessary to meet the on-going business operations, which are found in other similar businesses in the generally vicinity of Woody's Wharf.

This request specifically includes the following proposed clarifications to the current conditions of approval:

- 1) Allow the use of the outdoor patio to closing or 2:00AM daily.
- 2) Allow indoor dancing nightly until closing, confined to the interior of the building.
- 3) Adjust the maximum occupancy load for the building at 228.

Jay, please let us know if you have any questions, or need any further materials which will assist staff in its review and processing of this application.

Sincerely,

MPA, Inc.
on behalf of Woody's Wharf

Martin T. Potts
MPA, Inc.
a California Corporation

MTP/idi

cc: Mr. Mark Serventi
Mr. Greg Pappas
Mr. Ralph Furra

Attachment No. PC 4

Planning Commission Resolution, Staff
Report and Minutes dated November 8,
2102

RESOLUTION NO. 1898

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA AND WAIVER OF SIX PARKING SPACES; BUT DENY A CHANGE TO OUTDOOR DINING OPERATIONS, AND THE ADDITION OF PATRON DANCING; AND SUPERSEDING USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. The applicant filed an application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
5. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.
6. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely

impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.

7. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
8. A public hearing was held on November 8, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.
2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS.

In accordance with Sections 20.48.030, and 20.52.020 of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPd) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

- B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.
- B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.
- B-3. The subject property is not part of a specific plan area.

Finding:

- C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

- C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit.
- C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.
- C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m., and to extend the closing hour of the outdoor dining area to Midnight on Friday and Saturday, as proposed.

Finding:

- D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. The removal of table and chairs from the outdoor dining area, as proposed without the introduction of any noise mitigating apparatus or construction, not only increases the number of patrons both inside and outside but is also anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants, with the outside noise levels having the greatest impact on the neighbors.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The extension of the closing hour to 2:00 a.m. in conjunction with the increased occupancy of the outdoor dining area, as proposed, is anticipated to result in noise levels

that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.

- D-5. The application as presented has not proposed alternatives or improvements to the existing glass barriers to mitigate existing noise issues and complaints to justify an increase in the closing hour of the outdoor dining area. Therefore, maintaining the current closing hour of 11:00 p.m., Sunday through Thursday, and Midnight on Friday and Saturday nights is required to mitigate and limit that impact, as recommended by staff in the attached conditions of approval. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times.
- D-6. The design and construction materials of the outdoor dining patio (existing glass walls) aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received. As conditioned, the limited hours of use of the outdoor dining area to 11:00 p.m. is appropriate in this case to alleviate noise related issues and complaints that cannot be otherwise mitigated. That the approval to allow for a closing hour of Midnight on Friday and Saturday nights is appropriate in this particular case since the outdoor area is restricted to use for dining only and not an extension of the bar activities. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building. The hours of the outdoor area are appropriate since no physical barriers have been proposed to aid in further mitigating noise levels that are anticipated to rise if occupancy is increased, as proposed by the applicant.
- D-7. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-8. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. An increase in pedestrian and vehicular activity from patrons using the outdoor dining area during late night and early morning hours will not occur with the closing hour of 11:00 p.m. or Midnight, as recommended in this approval by staff. Since the applicant has not presented any additional physical barriers or other improvements to mitigate existing or anticipated increase in noise levels associated with increased number of patrons on the outdoor dining area.
- F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPD in order to accommodate the proposed closing hour of Midnight on Friday and Saturday nights for the outdoor dining area. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPD with

means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit NO. 2011-010, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of Midnight on Friday and Saturday nights of the outdoor dining area; but deny the introduction of patron dancing to the restaurant, the removal of tables and/or chairs from the interior of the restaurant or any change to the outdoor dining operations, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 shall become null and void.

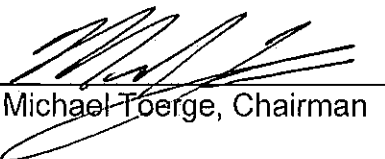
PASSED, APPROVED AND ADOPTED THIS 8th DAY OF NOVEMBER, 2012.

AYES: Brown, Hillgren, Kramer and Myers

NOES: Ameri, Toerge and Tucker

ABSTAIN: None

ABSENT: None

BY: 
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

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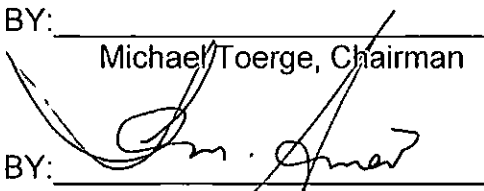
PASSED, APPROVED AND ADOPTED THIS 8th DAY OF NOVEMBER, 2012.

AYES: Brown, Hillgren, Kramer and Myers

NOES: Ameri, Toerge and Tucker

ABSTAIN: None

ABSENT: None

BY: 
Michael Toerge, Chairman

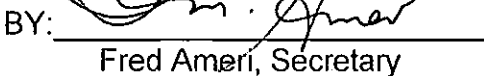
BY: 
Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. 2011-010 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant shall be limited to between 10:00 a.m. and 2:00 a.m., daily; the hours of operation of the outdoor dining area shall be limited to 10:00 a.m. to 11:00 p.m., Sunday through Thursday; and Midnight on Friday and Saturday nights. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m. daily. All service and occupancy of the outdoor dining area shall cease after 11:00 p.m., Sunday through Thursday and after Midnight on Friday and Saturday nights.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans*

PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.

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20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
 21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
 22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
 23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
 24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
 25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
 26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.*
28. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
29. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
30. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
31. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
32. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
33. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.*
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.

35. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
36. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
37. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
38. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
39. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
40. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
41. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
42. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
43. All exits shall remain free of obstructions and available for ingress and egress at all times.
44. Strict adherence to maximum occupancy limits is required.
45. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
46. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the

certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

47. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
48. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
49. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
50. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
51. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPB on demand.
52. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
53. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
54. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
55. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
56. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind

and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

November 8, 2012

Agenda Item 5

SUBJECT: Woody's Wharf Use Permit - (PA2011-055)
2318 Newport Boulevard
▪ Conditional Use Permit No. UP2011-010

APPLICANT: Martin Potts, MPA, Inc., on behalf of Woody's Wharf Restaurant

PLANNER: Javier S. Garcia, AICP, Senior Planner
(949) 644-3206, jgarcia@newportbeachca.gov

PROJECT SUMMARY

Amend the existing use permit to change the operational characteristics of an existing restaurant. The changes include: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. The application will also address minor changes to and the elimination of conditions of approval that are duplicative, no longer applicable, or need clarification.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. _____ approving Conditional Use Permit No. UP2011-010 (Attachment No. PC 1), to allow changes to the operation of the restaurant that include:
 - 1) the introduction of patron dancing within the interior of the restaurant;
 - 2) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.;
 - 3) the use of the valet parking on an as-needed basis; and
 - 4) waiver of a portion of the required parking.

But denying the request to allow changes to the use of the outdoor dining area, that include:

- 1) removing tables and chairs within the outdoor dining area; and
- 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

VICINITY MAP



GENERAL PLAN and COASTAL LAND USE PLAN



ZONING



LOCATION	GENERAL PLAN and COASTAL LAND USE PLAN	ZONING	CURRENT USE
ON-SITE	MU-W2 (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Woody's Wharf Restaurant
NORTH and SOUTH	MU-W2 and MU-W (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Restaurant, with Commercial and Residential Uses Beyond To the South - Commercial Buildings (Vacant)
EAST	The Rhine Channel and CM (Marine Comm) and RM (Multi-Unit Residential)	The Rhine Channel and CM (Marine Commercial) and RM (Multi-Unit Residential)	The Rhine and Lido Peninsula Beyond
WEST	Public Right-of-Way with Municipal Parking Lot and R-1 (Single-Unit Residential)	Municipal Parking Lot and R-1 (Single-Unit Residential) beyond	Municipal Parking lots and Residential Uses Beyond

INTRODUCTION

Project Setting

The restaurant is located on the east side of Newport Boulevard between 24th and 26th Streets overlooking the Rhine Channel. The property is comprised of three lots with a total area of approximately 13,260 square feet, with a commercial building which crosses the interior property lines. The restaurant has been in operation since 1965 and offers live entertainment. The restaurant building measures approximately 3,305 square feet with 1,173 square feet of interior dining area and a 709 square foot outdoor dining area. There are 26 on-site parking spaces (6 spaces are tandem in accordance with the valet parking plan). The site plan and floor plans are depicted in Attachment PC11. The project provides space for approximately eight (8) boats on the Rhine Channel, available for patrons who choose to take a boat to the restaurant. Staff will also present the issue the combining of lots and recent issue related to the closing of the restaurant kitchen at 10:00 p.m.

Project Description

The application involves an amendment to an existing use permit to change the operational characteristics of an existing restaurant. The changes include: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as outlined in the applicant's justification letter (Attachment PC2) and subsequent letter responding to the proposed conditions of approval (Attachment PC3).

Background

On November 10, 1983, the Planning Commission approved Use Permit No. 3065 allowing a 416 square foot increase in the restaurant's "net public area" (NPA) for outdoor dining. The total net public area was 1,589 square feet (1,173 interior and 416 outdoor). The use permit also allowed tandem parking with valet parking service (20 spaces plus 6 spaces in tandem). Additionally, the operator was required to pay annual in-lieu fees to the City for parking in the municipal parking lot (10 parking spaces). The minutes and plans approved at that hearing are attached (Attachment No. PC4).

In May of 1986, the Planning Department became aware that changes had occurred in the patio/deck area had been increased beyond the 416 square feet as authorized. An application to amend Use Permit No.3065 was submitted on December 10, 1987 requesting an increase to the patio/deck area of approximately 1,082 square feet. The matter was heard on February 4, 1988 with a unanimous vote (7 ayes) to deny the

request. The minutes and proposed plans are attached (Attachment No. PC5). The Planning Commission, at that time, also requested a review of compliance with the conditions of approval of Use Permit No. 3065. That hearing was scheduled for March 24, 1988.

On March 24, 1988, the Planning Commission held a public hearing to amend Use Permit No. 3065 and require the installation of physical barriers to limit the outdoor dining area to 416 square feet and to reduce noise. The minutes and plans approved at that hearing are attached (Attachment No. PC6).

On October 4, 1995, the Planning Department approved Outdoor Dining Permit No. 1, which allowed a 293 square foot expansion the outdoor dining area. Condition No.3 required the use of the outdoor patio to cease at 11:00 p.m. Please see the October 4, 1995 approval of Outdoor Dining Permit No. 1 and plans (including delineation of approved NPA on deck/patio). The approval letter and plans are attached (Attachment No. PC7).

The applicant took over the operation in 2002 and has allowed patron dancing and has kept the outdoor dining area open later than 11:00 p.m. Complaints have been received regarding noise. The subject application proposes to address the hours of operation, noise complaints, and operational changes that include the addition of dancing, and valet parking service. The applicant obtained a live entertainment permit issued on March 16, 2006, that authorized live entertainment in conjunction with the restaurant, conditions of approval related to the use and a condition that prohibits dancing (Attachment PC 8).

DISCUSSION

Analysis

General Plan/CLUP

The Land Use Element of the General Plan and the Coastal Land Use Plan (CLUP) designate the site and the adjacent properties as Mixed Use- Water Related (MU-W2 and MU-W, respectively). The project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses. Both the General Plan and the CLUP set a development intensity limit of 0.5 floor area to land area ratio (FAR) for non-residential development. The 3,305 total square foot building and 13,260 gross square feet for the project site results in an FAR of 0.25. The project complies with the maximum FAR permitted by the General Plan FAR designated for commercial uses.

Zoning

The existing eating and drinking establishment is located in MU-W2 (Mixed-Use Water Related) Zoning District and is consistent with the land uses intended for properties fronting Newport Boulevard within McFadden Square/Cannery Village neighborhood.

Dancing

The facility currently provides live entertainment (grandfathered) and dancing (unpermitted). The live entertainment operates in conjunction with a valid live entertainment permit that was issued on March 14, 2006. Dancing activities as currently operate is prohibited under the Live Entertainment Permit Condition of Approval No. 3; and the location of a dance floor or area within the restaurant is not in substantial conformance with Use Permit No. 3065 as amended on March 24, 1988, specifically Condition of Approval No. 1 specifies:

1. That development shall be in substantial conformance the plot plan and floor plan approved by the Planning Commission on November 10, 1983, except as noted below.

Therefore, if the Planning Commission approves patron dancing within the interior of the facility, the live entertainment permit must also be amended to reflect approved changes to the operation and related conditions of approval.

At approximately 10:00 p.m., the tables and chairs within the center of the main dining area are removed to provide an area for dancing of approximately 400 square feet. Additionally, a portion of the tables and chairs on the outdoor dining area are removed to provide an area for patrons displaced by the dance floor, as depicted on the Late Hour Floor Plan, approximately 400 square feet (Attachment PC9). The operator was notified on August 13, 2010, following meetings between the applicant and City Staff; and again on July 19, 2011 (Attachment PC 10) that an amendment to the use permit is required to address the proposed change in operation to allow dancing, the change in floor plan related to the outdoor dining area, and to review the impact on parking demand for the facility. If the use permit is approved to allow patron dancing within the interior of the facility, the live entertainment permit must also be amended to reflect approved changes to the operation and related conditions of approval.

The removal of table and chairs as described not only increases the number of patrons both inside and outside, but also results in an increase in the noise levels of those areas which adversely impacts the neighboring properties. The dancing activities are also anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment located near the access to the outdoor dining area.

The Police Department has reviewed the Use Permit application and has significant concerns with the dancing as proposed at the establishment, as it can lead to a

nightclub type business model. Even with stringent conditions of approval in place, these types of operations can create a drain on police resources. The Police Department also notes that the Commonwealth Lounge, next door, also contributes to the drain on police services in the vicinity. Therefore, staff believes that the recommended conditions of approval to limit the use of the outdoor dining area to 11:00 p.m. will lessen concerns related to the introduction of dancing and the increased noise levels that it generates. The report from the Police Department is attached for the Commission's information (Attachment PC11).

In addition, the Police Department has recommended conditions of approval that include a requirement for a security plan, licensed security personnel when live entertainment or dancing is provided, and employee training in the service of alcoholic beverages. It is anticipated that the presence of security personnel and the employee training will alleviate Police Department concerns and will also reduce incidents that cause a drain on police resources in the vicinity. These conditions have been incorporated into the draft resolution (Attachment PC 1).

Hours of Operation

The applicant requests to change the restaurant opening hour from 11:00 a.m. to 10:00 a.m., to accommodate Sunday Brunch and occasional private brunch reservations, and establish the closing hour of 2:00 a.m., daily. Use Permit No. 3065 does not specify hours of operation for the restaurant, however, the 2:00 a.m. closing hour is currently regulated by the Department of Alcoholic Beverage Control (ABC). The applicant also requests to extend the hours of the outdoor dining area, change the opening hour from 11:00 a.m. to 10:00 a.m., daily; and the closing hour from 11:00 p.m. to 2:00 a.m., daily. Staff has no objections with the proposed extension of the opening hour, since ambient noise levels are higher during the daytime hours and noise impacts and complaints have not been received during those hours. However, the proposed extension of the closing hour for the outdoor dining area, if allowed in conjunction with the live entertainment and dancing, will adversely impact the neighboring properties and residential occupants that have raised objections and complaints. Therefore, staff recommends that the closing hour remain at 11:00 p.m. for the outdoor dining area as the only means to minimize the impact on neighbors.

Should the Planning Commission approve the application, the applicant would be required to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with a means to modify, suspend, or revoke the operator's ability to maintain late-hour operations. Many of the conditions that will be included in the Operator's License will be the same conditions imposed by the use permit. The Operator's License is a tool that the Police Department can utilize to enforce the conditions of approval of the use permit.

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations and outdoor dining:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

As the Police Department report indicates, reports of noise related complaints are already experienced by residents in the neighborhood. Although, not all noise complaints can be definitively attributed to Woody's Wharf, since the Commonwealth Lounge to the north may also contribute to the noise impacts. The possibility that noise impacts to the surrounding area will be further compounded if the proposed change in operation is approved is highly anticipated. However, if the facility conformed to the current approval, there would be no appreciable increase in noise impacts. Staff has also received correspondence from residents that live in the neighborhood raising concerns about the proposed change in hours and the operation in general. That correspondence is attached for the Commission's information and consideration (Attachment PC12).

The proposed hours of the outdoor dining area to 2:00 a.m., if approved, will lengthen the amount of time that the noise resulting from dancing and live entertainment activities will be exposed to the outdoor dining area caused by patrons opening and closing the doors between the main dining room and the outdoor dining area. This traffic between areas after 11:00 p.m. (current required closing hour) and up to 2:00 a.m. (proposed extended closing hour) will adversely affect the neighboring properties; and can only be mitigated by the construction of noise abatement structures or barriers or a restriction on the hours of use. Therefore, staff recommends that the extension of the closing hour be denied and that the use of the outdoor dining area cease at 11:00 p.m. A condition of approval to that effect is included in the resolution.

The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along Newport Boulevard; however, this portion of roadway is not a major residential road, so disturbances to residents related to traffic are not expected to occur.

Because the land use and zoning allow for mixed use development and an approved mixed use development at the future South Coast Shipyard project, there will be additional residential units in close proximity to the project site, within 100 feet to the south of the subject property. Therefore, staff maintains the recommendation to limit the

hours of operation of the outdoor dining area to 11:00 p.m., daily, is necessary and warranted.

Outdoor Dining

The outdoor dining area is located outside of the main dining room of the restaurant and measures 709 square feet. The approved outdoor dining area plans show tables and seating for 66 persons. The removal of a portion of the tables and chairs as proposed will provide standing area for patrons of approximately 400 square feet and will result in an increase in the number of patrons that will occupy the space. As stated previously, the increase in the number of patrons will increase ambient noise levels of patio area and increase the number of patrons and employees entering and exiting the building. Therefore, staff recommends the tables and chairs of the outdoor dining area not be allowed to be removed and that the number remain at 66 seats, as currently authorized, to prevent any increase in the existing ambient noise levels.

Parking

The current parking requirement for Woody's Wharf is 40 parking spaces which are currently provided by 26 on-site spaces, the payment for 10 in lieu parking spaces, and the credit of four spaces for the boat docks. Six of the on-site spaces are tandem spaces approved with valet parking plan. The applicant proposes to utilize the valet parking service on an as-needed basis (to satisfy peak demand, special events, and holidays) and when dancing and/or live entertainment occurs. The Public Works Department has no objection to the valet parking plan as previously approved and depicted on the plans submitted.

Although, the net public area of the establishment will remain the same, parking demand will increase if dancing is permitted. The parking standards for food uses range from one space per 30 to 50 square feet of net public area, depending on the operation of the facility. Therefore the amount of parking required can range between 32 and 53 spaces, respectively. The table below shows how the parking requirements and available parking are affected by the proposed change to valet parking service, dancing and live entertainment activities.

Parking Location	Current Operation (1/40)	No Valet Parking Provided	Valet Parking and Dancing/Live Entertainment @1/35 s.f.
On-site	20	20	20
On-site Tandem – Valet Service	6	0	6
In-lieu	10	10	10
Boat Dock Credit	4	4	4
TOTAL ALLOCATED	40	34	40
REQUIRED	40	40	46
Deficit/Surplus	0	-6	-6

Staff is of the opinion that a revised parking requirement of one parking space per 35 square feet of NPA, 46 spaces, is appropriate in this case. The operation as proposed will result in a deficit of 6 spaces during the daytime and 6 spaces during nighttime with dancing and/or live entertainment with valet parking service provided. However, during the daytime hours, staff has observed that the restaurant is not operating at full capacity and the municipal parking lot across the street with more than 60 metered parking spaces is also available. Therefore, the provision of a full-time valet parking service during the day is not justified and a waiver of that portion of the parking requirement is appropriate.

During the nighttime operation, the restaurant will provide the valet parking service and the increased parking demand will result in a deficit of 6 spaces. However, it should also be noted that the municipal parking lot across the street with more than 60 metered parking spaces is also available and that meters are not in operation after 6:00 p.m., daily. Therefore, based on the reasons and information presented and the proximity of municipal parking lots across the street, staff believes a waiver of a portion of the on-site parking requirement is appropriate in this case.

Food Service

Staff became aware that the kitchen of the restaurant currently closes at approximately 10:00 p.m., daily. Staff discussed this issue with the applicant and informed them that a condition of approval has been included requiring that food service remain available during all hours of the restaurant operation. The applicant indicates a reduced menu of appetizers and side dishes will be offered later in the evening, consistent with the general practice of other restaurants in the area. This approach would be consistent with the condition of approval.

Combining of Lots

The applicant explored enclosing the outdoor area to minimize noise impacts to surrounding uses. To do so, however, would require the enclosure to cross property, or lot lines. The Subdivision Code Section 19.04.035 of the Newport Beach Municipal Code (NBMC) states that "No person shall develop any structure including, but not limited to, a principal or accessory structure across a lot line." Staff has no means, within the Code as written, of approving the issuance of any permits to add to the existing building or enclose the outdoor dining area, without the combining of the lots into a single parcel of land. The property owner, who is different from the current operators of Woody's Wharf, will not agree to the combining of the lots. The disagreement between the operator and the property owner to combine the lots is not an issue that the Planning Commission can resolve.

The Subdivision Code (Title 19 of the NBMC) provides no procedure or variance to allow staff or the Planning Commission to grant relief from the requirement to combine. There are provisions to allow the waiver of the requirement to file a parcel map, but only in favor of the approval of a lot line adjustment/lot merger or the processing of a

certificate of compliance. Both of those procedures provide the same result as a parcel map (combining the lots into a single parcel). However, once either is approved and recorded, it can only be undone or rescinded by the filing and recordation of a parcel map. Therefore, the property owner is not amenable to perform any of those processes to combine and wishes to maintain the underlying lot lines as currently exist.

Use Permit Findings

Pursuant to Section 20.52.020.F of the Zoning Code, the Planning Commission must make the following findings in order to approve a conditional use permit. Each finding is detailed in the attached draft resolution (Attachment PC 1):

- 1. The use is consistent with the General Plan and any applicable Specific Plan;*

The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation and complementary to the surrounding residential uses. The facility is not located in a specific plan area.

- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

The use is also consistent with the Mixed-Use Water Related (MU-W2) Zoning District. The MU-W2 district applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor serving commercial and residential dwelling units on the upper floors. Food Service uses can be expected to be found in this area and similar locations and are complementary to the surrounding commercial and residential uses.

- 3. The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity;*

The existing restaurant, with the proposed conditions of approval on the operational changes of the proposed project will generally comply with Zoning Code standards for eating and drinking establishments. The use of valet parking is not to be changed, except during the daytime operation when parking demand does not warrant it, but will be provided at all times during evening hours and when dancing, if approved, or live entertainment are provided. There are no exterior changes proposed to the outside of the building. This finding cannot be made since the proposed change in the operation to increase the hours of the use of the outdoor dining area will result in increased noise impacts on the neighboring properties and residents into the late hours after 11:00 p.m., is not compatible with the allowed uses in the vicinity.

4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.

5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

This is an existing eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use and the outdoor dining area. The authorized hours of operation to limit the use of the outdoor dining area to 11:00 p.m. were imposed to limit the potential noise impacts on the surrounding uses and resident in the vicinity. However, the restaurant has operated the outdoor dining area beyond the approved 11:00 p.m. closing hour which has generated complaints from the residents in the vicinity and required that the Police respond to those complaints. Therefore, this finding cannot be made in conjunction with the request to increase the closing hour of the outdoor dining area, since use of the outdoor dining after 11:00 p.m. has proven to be detrimental to persons residing in the neighborhood.

The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses. Adequate parking will be provided for the proposed operation at all times of the day, with a deficit of 6 spaces during daytime and nighttime operations. The use of the outdoor dining area will cease by 11:00 p.m., daily, as currently authorized. To ensure that the interior operational changes do not create a detrimental impact during late hours, the operator will be required to secure an Operator License and will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance to areas surrounding the establishment and adjacent properties during business hours. Should the operator be unable to abide by the conditions of approval or prevent objectionable conditions from occurring, the Police Department will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Summary

The restaurant has operated beyond their City approvals by offering patron dancing and not closing the outdoor dining area by 11:00 p.m. As stated above and in correspondences, the restaurant operation has generated a significant amount of complaints related to noise. Staff feels the operator's compliance with closing the outdoor dining area no later than 11:00 p.m., maintaining no more than 66 seats in the

outdoor dining area, and requiring all doors and windows to be closed will reduce the noise impacts on the surrounding area.

Staff recommends Planning Commission adopt the draft resolution approving Use Permit No. UP2011-010 (PA2011-055), to allow:

- the introduction of patron dancing within the interior of the restaurant;
- extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.;
- the use of the valet parking on an as-needed basis and when dancing and live entertainment are provided; and
- a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service during the day.

But denying that portion of the application to allow changes to the use of the outdoor dining area that proposes:

- the removal of tables and chairs within the outdoor dining area; and
- the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

Alternatives

The Planning Commission may also modify that resolution to authorize changes to the recommended action or continue this public hearing to allow the applicant additional time to resolve issues that have been raised at the public hearing.


Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Javier S. Garcia, AICP,
Senior Planner

Submitted by:


Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval with Findings and Conditions
- PC 2 Applicant's Use Permit Request and Justification Letter
- PC 3 Applicant's Response to Proposed Conditions of Approval
- PC 4 Excerpt of Planning Commission Minutes, dated November 10, 1983 with Plans
- PC 5 Excerpt of Planning Commission Minutes, dated February 4, 1988 with Plans
- PC 6 Excerpt of Planning Commission Minutes, dated March 24, 1988 with Plans
- PC 7 Outdoor Dining Permit No. 1, dated October 4, 1995 with Plans
- PC 8 Live Entertainment Permit, Woody's Wharf Restaurant
- PC 9 Proposed Late-Hour Floor Plan
- PC 10 City Correspondence dated August 13, 2010 and January 19, 2012
- PC 11 Police Department Recommendation and Alcohol Related Statistics
- PC 12 Correspondence and Letters
- PC 13 Project Plans- Site Plan and Floor Plan

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ITEM NO. 5 Woody's Wharf Use Permit (PA2011-055)
Site Location: 2318 Newport Boulevard

Senior Planner Javier S. Garcia presented details of the report addressing consolidation of previous conditions of approval, removal of duplicate conditions or those that no longer apply and inclusion of new conditions of approval. He addressed location, details of the requests, setbacks, parking lot, existing conditions, surrounding properties, nearest residential district, spaces for boats, approval of the original Use Permit and allowances as well as subsequent amendments and permits. Mr. Garcia addressed patron dancing, extensions of opening and closing hours, valet parking, site plan, outdoor dining area, bar, main entrance and access walkway and doors.

Mr. Garcia addressed removal of tables and chairs to allow for dancing, extension of opening and closing hours, ambient noise levels, closure of outdoor dining area and issues related to use of the patio beyond 11:00 p.m. He stated no parking issues during the day, valet parking service during night-time use and availability of municipal parking lots for additional parking during evenings. He presented details of staff recommendations as presented in the report.

Chair Toerge invited the applicant to address the Commission.

Mark Serventi, Applicant and Co-owner of the restaurant, thanked staff and the Commission and introduced others on his team. He noted that the facility is a good neighbor and has made efforts to mitigate problems in the area. Mr. Serventi addressed their request noting that they are not asking for anything new and referenced a request for amending the conditions of approval. He stated that he understands the concerns voiced by residents and listed actions to resolve some of the issues and their willingness to work with staff and residents. Mr. Serventi referenced Police reports noting there was only one complaint reported in many years of operation. He reported actions to minimize noise impacts, meetings with Code Enforcement, self-imposed curfews and the possibility of hiring a security guard to monitor the adjacent condominiums. Mr. Serventi addressed construction of a retractable roof to minimize noise and further plans to minimize noise impacts.

Chair Toerge noted that the issue of the retractable roof is not being addressed at this time.

Mr. Serventi asked for the City's help in mitigating noise impacts by allowing an enclosure and the possibility of conducting sound readings and studies.

Marty Potts, Entitlement Consultant, referenced a handout, distributed under separate cover, asking for amendments to the conditions of approval. He agreed with the need for a new operator's license permit and expressed concerns that the Code indicates that the conditions could be amended to be more restrictive and that the final decision maker is the City Manager. He requested the ability to come back to the Planning Commission instead of the City Manager on additional issues. In addition, he asked that they be allowed to remove patio chairs and tables after 10:00 p.m. Regarding a dance permit, he felt that it is not applicable in this instance and stated that the owners are accepting to prepare a security plan for the Police Department's approval. Regarding the latter, he indicated wanting to make sure that the process is consistent with the use permit conditions approved by the Commission. Mr. Potts requested the allowance for events to be conducted by outside promoters. He reported that there is a cover charge in the evenings and asked that the Commission consider the condition or modification.

Roger Jon Diamond focused on the claim by opponents of the application regarding noise being generated by the restaurant. He noted the existence of a restaurant and a bar between Woody's Wharf and the existing condominiums and stressed that the source of the noise is not Woody's Wharf. He felt that there is no evidence that Woody's is the source of the noise and stressed the need for a

mechanism to establish the truth or the falsity of the accusations. Mr. Diamond addressed the importance of supporting small businesses and asked that the Commission approve the application with the modifications that are needed to make sure that the business does not have to close at 11:00 p.m. He noted that there are residential properties to the west of Woody's that have made no complaints at all.

Interested parties were invited to address the Commission on this item.

Denver Andrews, Legal Counsel to the 28th Street Marina Association, noted a direct line of sight to the Woody's Wharf patio. He emphasized that the homeowners in the Association realize, appreciate and respect the fact that they are in a mixed-use area. Mr. Andrews noted that people purchased their homes in the neighborhood with expectations that there would be conditions placed upon adjacent businesses that would respect the rights of those residing in the neighborhood. He felt that the subject restaurant has not demonstrated respect for the nearby residential neighborhood and that the business has repeatedly violated and failed to operate in accordance with its permits, particularly with respect to the use of the outdoor patio. Mr. Andrews stated that the Association is not asking the restaurant to close, but rather that the outdoor patio be closed at 11:00 p.m. and that it be enforced. He requested that the Commission deny the application of Woody's Wharf to extend the use of the outdoor patio beyond 11:00 p.m.

Jack Gleason, Director of the 28th Street Marina Association, voiced opposition to the staff report related to clarification of condition number 3. He suggested including that all service and occupancy of the outdoor dining area cease at 11:00 p.m. daily. He indicated opposition to the dancing, referenced denial of a café dancing permit and agreed with a memo from the Police Department regarding their projection that the applicant's proposal will result in an increase in police-related activities and calls for police services and their recommendation to not approve the application. He asked that regulations in place be upheld. Mr. Gleason felt that bad behavior should not be rewarded.

Joe Balzar reports that he resides closest to the subject property and is not shy about complaining about noise. He stated that there is noise on the street but that it is not coming from Woody's. He suggested that the Commission seek proof as to the source of the noise and spoke in support of the application.

Brian Serra indicated that he would oppose the waiver of any of the parking spaces, commented on the noise and felt that current problems are endemic not just to Woody's, but all of the restaurants/bars in the area. He opposed the extension of operating hours.

In reply to Vice Chair Hillgren's inquiry, Mr. Serra addressed valet parking at night and noted that daytime parking is not an issue.

Kent Stoddard reported that noise from Woody's is extensive and routinely prevents him from sleeping. He stated opposition to the extension of patio hours past 11:00 p.m. and allowing dancing. He asked that the outdoor dining area shall be closed at 11:00 p.m. daily and not be used or occupied after 11:00 p.m. He distinguished between the noise from the Commonwealth restaurant and Woody's and addressed the number of calls for police services at Woody's and recommendations by the Police Department to deny the application.

Laith Ezzet asked for the opportunity to sleep and opposed allowing dancing in the facility. He addressed the use of the patio and the inability to lock the doors that go out into the patio. He reported that problems have existed even when the Commonwealth restaurant has been shut down over the years.

Dennis Halloran referenced recent actions by the Laguna Beach Planning Commission, reported experience with mixed-use areas and stated that Woody's has recently become a nightclub which is inappropriate in a mixed-use area. He agreed with the need to clearly specify use and closure of the outdoor dining area and encouraged the Commission to deny the application.

Norman Einhorn spoke in opposition to the application and noted that he has made many complaints throughout the years regarding the operation of Woody's. He stated that current laws are not being enforced and that they should not be rewarded. He asked that the Commission deny the application.

Christopher Rolfs spoke in opposition to the application and addressed noise related to Woody's Wharf. He thanked the Commission for making the neighborhood better, but felt that the situation has become worse throughout the years.

Joe Reiss expressed concerns that the owners of Woody's Wharf have operated the business while multiple violations have occurred. He spoke in opposition to the application and noted that the issue is one of quality of life. He encouraged the Commission to accept the recommendations from the Police Department and noted the high concentration of alcohol-related uses in the area. In addition, he addressed problems with parking and lack of parking and noise studies.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

In response to an inquiry from Chair Toerge, Mr. Garcia reported that Woody's Wharf has always been a restaurant.

In response to Vice Chair Hillgren's inquiry, Mr. Garcia addressed the possibility of putting a roof over the patio and the prohibition of placing additional structures across the lot line, without consolidating the lots. Mr. Garcia reported that the Code does not require noise or parking studies be submitted for this type of change since it is an existing use.

Commissioner Tucker inquired regarding the possibility of a "lot-tie agreement" to allow placement of a patio cover structure. He stated that such an agreement would allow the lots to be treated as one while the patio cover was in place.

Ms. Brandt noted the two different Codes being considered including the State Building Code and the City's Municipal Code requirements. She addressed steps relative to certificates of compliance and the need to subdivide once conditions would change.

Commissioner Tucker noted that the noise issue is a Code Enforcement issue and did not think that it was an item for the Commission to approve or not approve. He commented that he would not support expanding the use to include dancing nor the operation of the patio beyond 11:00 p.m.

Mr. Garcia addressed allowances related to the current approval.

Community Development Deputy Directory Brenda Wisneski explained that the noise issue would be a Code Enforcement issue regardless of the Planning Commission's decisions.

Commissioner Tucker referenced the Police Department recommendations and questioned why staff would find that dancing would be acceptable.

Mr. Garcia addressed limitations of the use of outdoor dining and felt that allowing dancing would allow for private parties/receptions/fundraising events and that limiting the dancing to the interior would not impact the neighbors.

Chair Toerge commented on conflicts with the previous use of the site and the lack of a noise study. He noted that the facility is approved as a restaurant but that when tables and chairs are removed and cover charges are implemented, these are not the activities of a restaurant. He stated that he would be inclined to deny the application but suggested that the applicant consider continuing the item while they try to conduct a noise study and enclosing the roof. He highlighted the proposed changes to the conditions.

Commissioner Brown agreed with Chair Toerge's comments. He asked whether dancing is permitted with the current permit and Mr. Garcia reported that it is not. Commissioner Brown felt that it is unfortunate that the noise issue cannot be mitigated with a patio cover and expressed concerns that the operation is migrating from operation of a restaurant to a night club use.

Commissioner Kramer suggested continuing the item in order to give the applicant the opportunity to prepare a better case regarding noise evidence and possible solutions with respect to a cover. He stated that he is in favor of the application and felt that he is not completely satisfied with the solutions presented at this time.

Commissioner Ameri agreed with Commissioner Kramer's comments and addressed compliance issues involved where the applicant has been in violation of what they are allowed to do. He stressed the need to comply with the Code and felt that many of the residents' concerns may not be directly related with dancing, but rather the whole structure of the operation of the facility. He agreed with continuing the item to allow the applicant to develop solutions acceptable to all sides.

Vice Chair Hillgren agreed with allowing opportunities to modify the uses in order to work with the neighbors. He addressed incompatibility with the way the property is used or has been used. He felt that a thorough review has not been conducted and stated the need for the proper studies to ensure compliance.

Motion made by Chair Toerge and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

Chair Toerge invited the applicant to address the Commission.

Mr. Serventi reported that, per City Code, a dance permit is not required when an admission fee is charged and that is why dancing has occurred. He noted his willingness to work with staff and residents to supply the necessary noise and parking studies to generate mutually-agreeable solutions, and asked for a continuance.

Chair Toerge closed the Public Hearing.

Commissioner Brown questioned how the issues of noncompliance be addressed currently if the item is continued.

Chair Toerge noted that noncompliance with current approvals and conditions is a Code Enforcement issue.

Commissioner Tucker addressed the dancing issue noting that it changes the character of the facility to a night club. He stated that a continuance will not change his mind on the matter.

Substitute Motion made by Commissioner Kramer and seconded by Commissioner Ameri, to continue the item to the January 17, 2013, meeting of the Planning Commission as requested by the applicant.

Commissioner Kramer commented on the possibility of allowing the applicant to present more evidence, stated that he does not have an issue with allowing dancing and that there should be a modification of the establishment of a restaurant to a bar.

Commissioner Ameri suggested that the Association designate a person to contact staff and work with the owners to ensure that when the item returns to the Planning Commission, tangible solutions can be discussed.

Chair Toerge felt that the only way the project can move forward is with some type of enclosure and stated that he will not support the continuance.

Chair Toerge called for the question.

The substitute motion failed 3 – 4.

AYES:	Ameri, Brown, and Kramer
NOES:	Hillgren, Myers, Toerge and Tucker
ABSTENTIONS:	None
ABSENT (Excused):	None

Chair Toerge restated the original motion.

Commissioner Tucker recommended including clarification regarding all service and occupancy of the outdoor dining area shall cease after 11:00 p.m.

Discussion followed regarding modifications to the findings in order to be consistent with the motion for approval.

Chair Toerge agreed to include Commissioner Tucker's recommendation in the motion.

Vice Chair Hillgren asked whether the Chair would consider different hours of closure for Friday and Saturday evening for the outdoor patio.

Chair Toerge indicated that he would not.

Substitute Motion by Commissioner Kramer and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., clarifying that all service and occupancy of the outdoor dining area shall cease after 11:00 p.m. except on Friday and Saturday nights which would be extended to 12:00 midnight.

Assistant City Attorney Mulvihill requested clarification from Vice Chair Hillgren.

Commissioner Tucker seconded Chair Toerge's original motion to include clarification regarding all service and occupancy of the outdoor dining area ceasing after 11:00 p.m.

Commissioner Myers clarified that dancing will not be allowed. He felt that by eliminating dancing, the nature of the business is being changed and indicated support of staff's original recommendation. He suggested looking at the original recommendation with limits on the use and operation of the outdoor dining patio.

Commissioner Ameri reiterated his support for continuance and expressed hesitancy in taking away something that is already occurring at the establishment.

Substitute Substitute Motion by Commissioner Ameri to approve staff recommendations as presented without further recommendations. The Substitute Substitute Motion died for lack of a second.

Commissioner Tucker noted that dancing is not permitted currently and has not been "grandfathered".

Motion by Commissioner Myers and seconded by Commissioner Ameri, and failed 3 – 4, to reconsider continuing the item to the Planning Commission meeting of January 17, 2013.

AYES: Ameri, Myers, and Kramer
NOES: Brown, Hillgren, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

In accordance with direction from Assistant City Counsel Mulvihill, Commissioner Kramer indicated that he would maintain his substitute motion and Vice Chair Hillgren affirmed so as well.

Chair Toerge called for the question on the substitute motion.

The substitute motion carried 4 – 3.

AYES: Brown, Hillgren, Kramer and Myers
NOES: Ameri, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Brandt reported that there is no second scheduled meeting for the month of November because of the Thanksgiving Holiday. The next regularly scheduled meeting of the Planning Commission will be on December 6, 2012, where the Uptown Village Project will be presented as well as a new development in Corona del Mar as well as a use permit. Staff anticipates that it will be a long agenda and Ms. Brandt suggested starting the meeting at 5:30 p.m. rather than 6:30 p.m. She will contact Members individually regarding the matter.

Attachment No. PC 5

Police Department Recommendation and
Alcohol Related Statistics

**City of Newport Beach
Police Department**

M e m o r a n d u m

July 29, 2013

TO: Brenda Wisneski, Planning Deputy Director

FROM: Detective Randy Parker

SUBJECT: Woody's Wharf, 2318 Newport Blvd.
UP 2011-010 (PA2011-055).

At your request, the Police Department has reviewed the project application for *Woody's Wharf*, located at 2318 Newport Blvd, Newport Beach. Per the Project Description, the proposal is to allow the following changes in the operational characteristics of the existing restaurant in conjunction with the combining of the existing use permit and outdoor dining permit approvals: (1) Introduction of dancing within the interior of the facility and the addition of a dance floor area, and (2) Increase in the closing hour of use of the outdoor dining area from 11:00 p.m. to 2:00 a.m. to coincide with the closing hours of the restaurant. (3) The request to construct a "canopy" over an outdoor patio area. The request will also address changes to and the elimination of conditions of approval that are duplicative and/or no longer applicable or to clarify the intent or purpose.

The applicant currently has a Type 47 (General – Eating Place) license with the Department of Alcoholic Beverage Control.

I have included a report by Crime Analyst Caroline Staub that provides detailed statistical information related to calls for service in and around the applicant's place of business. This report indicates that this location is within an area where the number of crimes is at least 203% higher than the average of all reporting districts in the City. This location is within an RD that has 72 ABC licenses, which equals a per capita ratio of one license for every 44 residents. Additionally, this location is within an RD that is over the Orange County per capita average of ABC licenses.

Applicant History

Woody's Wharf has operated from their current location since the 1960's and offers a unique eating and drinking experience from a waterfront location facing the Newport Bay. Woody's Wharf once operated as a boat repair shop for local fisherman but continues to offer its patrons a traditional seaside village theme

consistent with the traditions of Newport Beach. The current owners are a group of friends that have known each other for over 25 years.

By all accounts, Woody's Wharf is a quality eating and drinking establishment that compliments the community of Newport Beach. It should be noted, however, that Woody's Wharf has generated numerous citizen complaints over the last several years reference the music and the crowd noise on the patio. Despite being made aware of the complaints, Woody's Wharf has exhibited a blatant pattern of violations related to the use of the outdoor patio after hours. Condition of Approval No. 3 of Outdoor Dining Permit No. 1 states:

"That the use of the outdoor patio shall cease at 11:00 p.m."

On October 12, 2010, NBPD Detective Bryan Moore prepared a memorandum in response to a request by Woody's Wharf to obtain a Café Dance Permit. His memorandum included the following information:

"It should also be noted that in November of 2009, the Police Department began receiving noise complaints (from nearby residents) reference the music and crowd noise on the outdoor patio of Woody's Wharf. Upon review of the use permit, the Planning Department determined that the outdoor patio was to be closed by 11:00 p.m."

On 11/20/2009, members of the Police Department and Planning Department met with the owners of Woody's Wharf to advise them of the complaints as well as the hours of operation for the outdoor patio."

Since that time, the Police Department has conducted four separate investigations which concluded that Woody's Wharf continued to violate the condition pertaining to the hours of operation for the outdoor patio. Additionally, other violations were observed including overcrowding, service of alcoholic beverages outside the licensed area and allowing dancing without a dance permit."

On January 19, 2012, Senior Planner Javier Garcia sent Woody's Wharf a "Notice of Violation-Final Warning" letter directing Woody's Wharf to comply with all current permits and approvals, including the 11:00 p.m. closing hour for the patio.

On 3/29/2012, a uniformed Newport Beach Police Officer conducted a bar check at Woody's Wharf at 2300 hours and observed the patio area to be open and was being utilized by approximately 70 patrons. The officer completed a report documenting his observations (DR# 12-2481).

On 5/10/2012, a meeting was held between owners of Woody's Wharf and representatives of various City departments, including Police, Planning and the

City Attorney's office. One of the topics discussed was the issue related to the use of the outdoor patio.

On June 1, 2012, Newport Beach Police Officers conducted a bar check at Woody's Wharf at 0030 hours and observed the patio area to be open and was being utilized by approximately 50 patrons. One of the officers completed a report documenting his observations (DR# 12-4401).

On March 28, 2013, Newport Beach Police Detectives conducted a bar check at Woody's Wharf at approximately 2345 hours and observed the patio area to be open and was being utilized by approximately 60-70 patrons. There were 10-20 patrons dancing in the cleared out area of the main dining area to music being provided by the D.J. Detectives left Woody's and walked across Newport Blvd. to the metered parking lot at 26th Street (approx. 40-50 yards from Woody's). The crowd noise as well as the noise from the D.J. (inside) was audible outside. Detectives completed a report documenting their observations (DR#13-2600).

On March 29, 2013, Newport Beach Police Detectives conducted a bar check at Woody's Wharf at approximately 2345 hours and observed the patio area to be open and was being utilized by approximately 60-75 patrons. Detectives completed a report documenting their observations (DR#13-2671).

Police Activities and Calls for Service Data (Woody's Wharf)

Between January 1, 2012 and July 22, 2013, 157 calls for service to Woody's Wharf have come in to the Police Department. The below information represents a portion of those calls which are pertinent to the application:

- 5 calls for service related to possible drunk drivers
- 32 calls for service related to fights/assaults
- 23 calls for service related to misc. disturbances
- 12 calls for service related to over-intoxicated persons
- 2 calls for service related to noise

*The above information is a cursory look at calls for service. The individual details of each event have not been investigated.

This information indicates that a significant amount of police resources were utilized to address incidents related to Woody's Wharf over the past year and seven months.

Recommendations

The Police Department has some significant concerns about the proposed changes in the operational characteristics at Woody's Wharf. Despite previous violations, Woody's Wharf has continued to display a disregard for the requirement that they close the outdoor patio at 11:00 pm. The Police Department feels that an increase in the closing hour of the outdoor patio from

11:00 p.m. to 2:00 a.m. will have a significant impact on noise with regard to the nearby residential areas. It is unknown if the addition of a "canopy" will conceal the noise to the inside of the establishment until sound attenuating walls have been installed and tested. The Police Department has reviewed the noise studies provided and understands that the development of a "canopy" and windshield "should" decrease the noise coming from Woody's.

Additionally, despite the applicant's best intentions, we know based on our local history that the combination of live entertainment and dancing often lead to a nightclub type business model; especially after 10 p.m. Even with stringent conditions in place it has been our experience (with past and present establishments) that these types of operations can become a drain on police resources and ultimately have a negative impact on the health, safety and welfare of the community.

The Police Department understands that there are several other contributing factors to the noise associated with a restaurant/bar setting which include: increased vehicular traffic, patrons talking loudly outside the premise and other crimes/disturbances associated with alcoholic beverage consumption. The Police Department is also aware that the American Junkie, which is adjacent to Woody's Wharf, is a contributing factor to the noise complaints generated by nearby residents. It should be noted that the Police Department has also received two (2) calls for service from citizens regarding loud music coming from the American Junkie that required action from the Police Department.

It is for the above reasons that we are projecting that the applicant's proposal will result in an increase in police related activities and calls for police services. The resources required to address these events would detract from our ability to provide police services to the other areas of the community and therefore, we cannot recommend this application for approval.

It should be noted that the proposed operation will offer alcoholic beverage service (for on-site consumption) in combination with food service, late hours, and live entertainment. As a result, the applicant/operator will be subject to an Operator's License issued by the Chief of Police.

Should this application be approved, the Police Department recommends the following conditions:

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The Police Department has no recommendations.

Security

The applicant shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department.

The procedures included in the plan and any recommendations made by the Police Department shall be implemented and adhered to for the life of the use permit.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a Special Event Permit. A Special Event Permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a Use Permit.
2. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
3. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
4. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

5. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
6. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
7. Strict adherence to maximum occupancy limits is required.
8. Bottle service shall be prohibited.
9. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
10. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order, or sale of drinks is prohibited.

If you have any questions, please contact me at (949) 644-3706.



Detective Randy Parker
Vice/Intelligence/ABC



Dale Johnson, Captain
Detective Division Commander



Chief Jay R. Johnson

NEWPORT BEACH POLICE DEPARTMENT

Crime Analysis Unit

870 Santa Barbara Drive · Newport Beach · CA 92660 · 949-644-3791



CRIME AND ALCOHOL-RELATED STATISTICS - 2012

Subject:	<u>Calls For Service</u>		<u>Crimes</u>		<u>Arrests</u>			<u>Citations</u>	<u>ABC Info</u>	
	Part I Crimes	Part II Crimes	Crime Rate	All Arrests	DUI	Public Intoxication	Liquor Law	Alcohol Related	Active Licenses	License Per Capita
2318 Newport Blvd	8	10	not applicable	7	1	5	0	0	1	not applicable
Subject RD: RD15	249	595	7,889.73	711	67	366	2	343	72	44
Adjacent RD: RD13	96	171	5,485.71	156	15	50	0	107	4	438
Adjacent RD: RD14	20	14	1,230.01	23	0	13	0	3	0	0
Adjacent RD: RD16	84	231	1,914.31	199	18	88	3	187	8	549
Newport Beach	2,332	3,585	2,731.45	3,280	446	856	14	1,079	394	217
California	1,128,845	not available	2,994.92	1,183,470	104,345	99,017	15,904	not available	44,536	836
National	10,266,737	not available	3,294.93	12,408,899	1,215,077	534,218	500,648	not available	not applicable	not applicable

Summary for Woody's Wharf at 2318 Newport Blvd (RD15)

In 2012, RD15 had a total of 844 reported crimes, compared to a city-wide reporting district average of 152 reported crimes. This reporting district is 692 crimes, or 455%, OVER the city-wide average.

The number of active ABC licenses in this RD is 72, which equals a per capita ratio of one license for every 44 residents. Orange County averages one license for every 504 residents and California averages one license for every 836 residents. This location is within an RD that is OVER the Orange County and OVER the California per capita averages of ABC licenses.

Notes:

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft, and Arson. This report reflects City of Newport Beach data for calendar year 2012, which is the most current full-year data available. California and National figures are based on the 2011 Uniform Crime Report, which is the most recent edition. Crime Rate refers to the number of Part I Crimes per 100,000 people. Number of Active ABC Licenses is the total of all types of licenses known to the NBPD as of the date of this document.



Chief Jay R. Johnson

NEWPORT BEACH POLICE DEPARTMENT

Crime Analysis Unit

870 Santa Barbara Drive · Newport Beach · CA 92660 · 949-644-3791



CRIME AND ALCOHOL-RELATED STATISTICS - 2013 YTD

	Calls For Service		Crimes			Arrests				Citations		ABC Info	
Subject:	Part I Crimes	Part II Crimes	Crime Rate	All Arrests	DUI	Public Intoxication	Liquor Law	Alcohol Related	Active Licenses	License Per Capita			
2318 Newport Blvd	7	7	not applicable	2	0	2	0	1	1	not applicable			
Subject RD: RD15	147	313	4,657.79	360	32	162	4	209	72	44			
Adjacent RD: RD13	50	97	2,857.14	63	6	17	1	65	4	438			
Adjacent RD: RD14	10	12	615.01	5	0	3	0	1	0	0			
Adjacent RD: RD16	61	136	1,390.15	118	8	50	1	150	8	549			
Newport Beach	1,361	1,991	1,594.12	1,865	266	356	6	617	394	217			
California	1,128,845	not available	2,994.92	1,183,470	104,345	99,017	15,904	not available	44,536	836			
National	10,266,737	not available	3,294.93	12,408,899	1,215,077	534,218	500,648	not available	not applicable	not applicable			

Summary for Woody's Wharf at 2318 Newport Blvd (RD15)

YTD 2013, RD15 had a total of 460 reported crimes, compared to a city-wide reporting district average of 152 reported crimes. This reporting district is 308 crimes, or 203%, OVER the city-wide average.

The number of active ABC licenses in this RD is 72, which equals a per capita ratio of one license for every 44 residents. Orange County averages one license for every 504 residents and California averages one license for every 836 residents. This location is within an RD that is OVER the Orange County and OVER the California per capita averages of ABC licenses.

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Notes:

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft, and Arson. This report reflects City of Newport Beach data for calendar year 2013 YTD, through July 22.

California and National figures are based on the 2011 Uniform Crime Report, which is the most recent edition.

Crime Rate refers to the number of Part I Crimes per 100,000 people.

Number of Active ABC Licenses is the total of all types of licenses known to the NBPD as of the date of this document.

Additional Information

Highest Volume Crime in RD15
Petty Theft
Highest Volume Crime in RD13
Simple Assault
Highest Volume Crime in RD14
Burglary/Theft from Auto
Highest Volume Crime in RD16
Residential Burglary

Calls for Service at 2318 Newport Blvd	
911 HANGUP	1
BATTERY JUST OCC	4
BATTERY RPT	3
BEAT INFO	3
CITIZEN FLAG DOWN	1
CITIZEN/AGENCY ASSIST	3
DISTURBANCE DRUNK	1
DISTURBANCE MISC	1
DISTURBANCE URGENT	1
DRUNK DRIVER	2
DRUNK IN PUBLIC	1
GRAND THEFT RPT	1
KEEP THE PEACE	5
MEDICAL AID	1
MUNICIPAL CODE VIOLATIC	4
PATROL CHECK	3
PETTY THEFT RPT	5
PHYSICAL FIGHT	2
SUBJECT STOP	4
SURVEILLANCE	1
TRAFFIC STOP	5
UNKNOWN TROUBLE	2
VANDALISM RPT	3
VEHICLE STOP	7
VEHICLE THEFT RPT	1
WATER/SEWER PROBLEM	1
WELFARE CHECK	1
Grand Total	67

Additional Information

Highest Volume Crime in RD15
Petty Theft

Highest Volume Crime in RD13
Petty Theft

Highest Volume Crime in RD14
Burglary (Residential/Garage)

Highest Volume Crime in RD16
Petty Theft

Calls for Service at 2318 Newport Blvd			
23110	1	914T	1
242R	4	919	4
390	5	925SUB	1
415	7	925V	1
415390	6	928	1
415F	1	928LST	3
415M	1	929	3
415U	5	ALARM	1
459A	3	ASSIST	6
481J	1	BP	1
481O	1	CITZ	2
487R	1	FIGHT	5
488R	3	HAZARD	2
502	3	INFO	1
537J	1	MCVIOL	7
901T	1	MISC	1
902M	2	PC	2
909T	1	TRANS	1
Grand Total			90

Attachment No. PC 6

Noise Studies

Noise Measurement Survey
For
WOODY'S WHARF
CITY OF NEWPORT BEACH

Prepared For:

MPA, Inc.
4041 MacArthur Blvd., Suite 490
Newport Beach, CA 92660

Submitted By:

Mestre Greve Associates
Division of Landrum & Brown

Fred Greve P.E.
27812 El Lazo Road
Laguna Niguel, CA 92677
949•349•0671

May 28, 2013
Project #539001

SCANNED

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1.0 EXISTING SETTING

1.1 Project Description

Woody's Wharf is a restaurant and bar located at 2318 Newport Boulevard in the City of Newport Beach (Exhibit 1). Live DJ music is played inside in the bar on Thursday, Friday, and Saturday nights. The bar room is open to an outside patio area via doors that are usually open, but remain closed after 10:00 p.m. other than when customers and employees are entering and exiting. The outside area is surrounded by a glass barrier approximately 6 feet high. The outside patio area is also covered for part of the year with a canvas canopy. The restaurant has a parking lot in the front of the building which contains a valet parking operation on the DJ music nights and at other times when peak demand warrant the valet. The restaurant also has boat docks in the front of the restaurant. This dock area is monitored by restaurant personnel and patrons are not allowed to hangout on the docks after 10 p.m. Guests with boats are permitted to dock their boats and enter the restaurant, but not to stay on their boats after 10 p.m. Outside on the south side of the restaurant is small smoking area where patrons can gather.

Another restaurant/bar is located directly north of Woody's Wharf called the Commonwealth. This restaurant also has music. Other sources of noise in the area are other restaurant operations, traffic on Newport Boulevard, traffic on more distant roadways, boats traveling up and down the channel in front of Woody's Wharf, people staying on boats docked in the area, aircraft, and police helicopters.

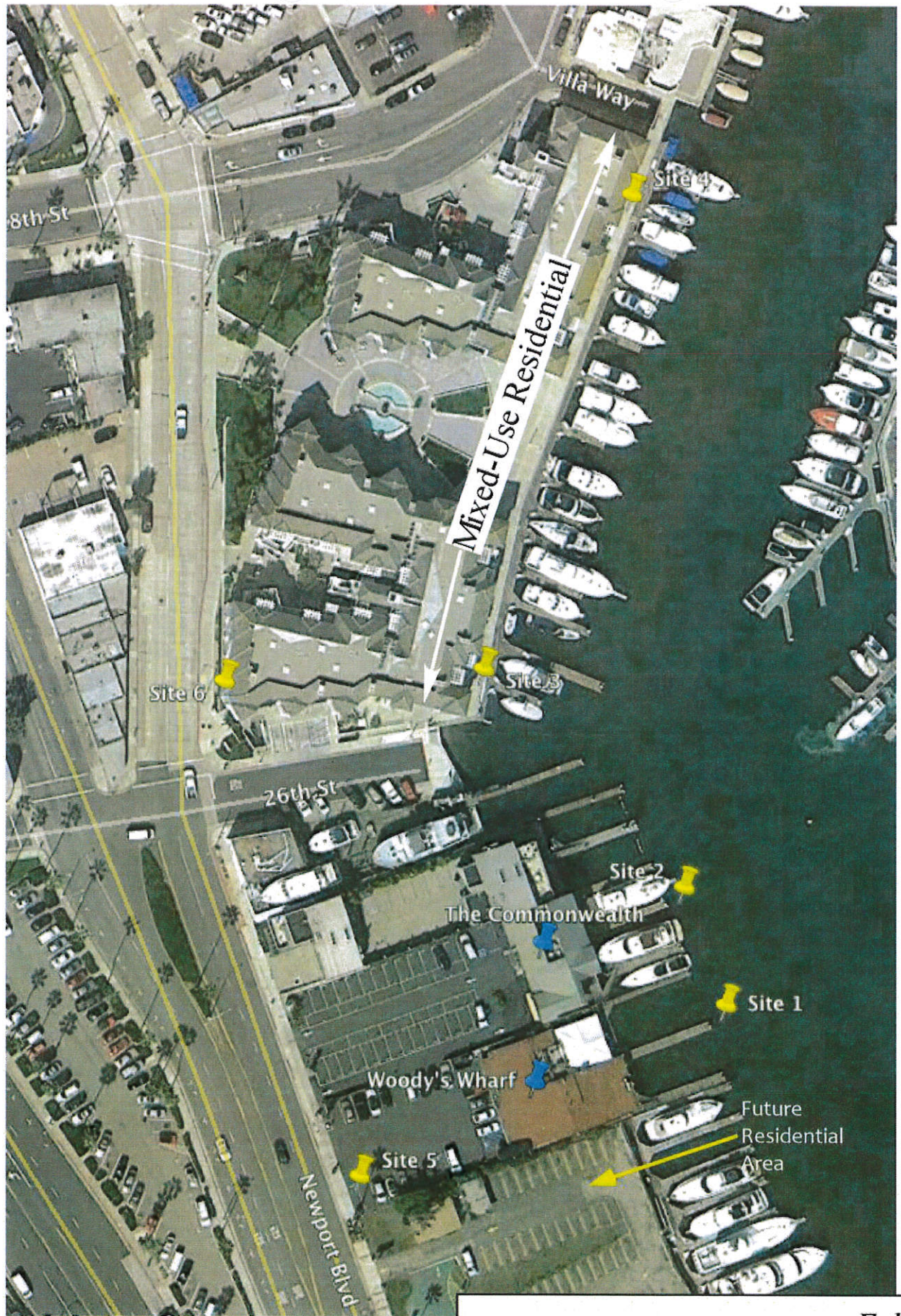
Complaints have been voiced regarding noise potentially from Woody's Wharf. The purpose of this study is to document the noise in the area and determine the contribution of Woody's Wharf to the overall noise levels experienced in the area. The focus of the monitoring is the mixed-use development to the north (refer to Exhibit 1). The second and third floors of the mixed-use development are residences, which are the source of the noise complaints. The Commonwealth, a single-family residence, and a small shipyard are located between the residences and Woody's Wharf.

Noise measurements were taken at six sites on Friday, December 21, 2012. The sites measured are shown on Exhibit 1. Woody's Wharf was in full operation during the measurements with a capacity crowd. This report presents the methodology and results of the noise measurement survey. Noise levels are contrasted and compared to the City's Noise Ordinance.

1.2 Background Information on Noise

1.2.1 Noise Criteria Background

Sound is technically described in terms of the loudness (amplitude) of the sound and frequency (pitch) of the sound. The standard unit of measurement of the loudness of sound is the decibel (dB). Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dB higher than another is judged to be twice as loud; and 20 dB higher four times as loud; and so forth. Everyday sounds normally range from 30 dB (very quiet) to 100 dB (very loud).

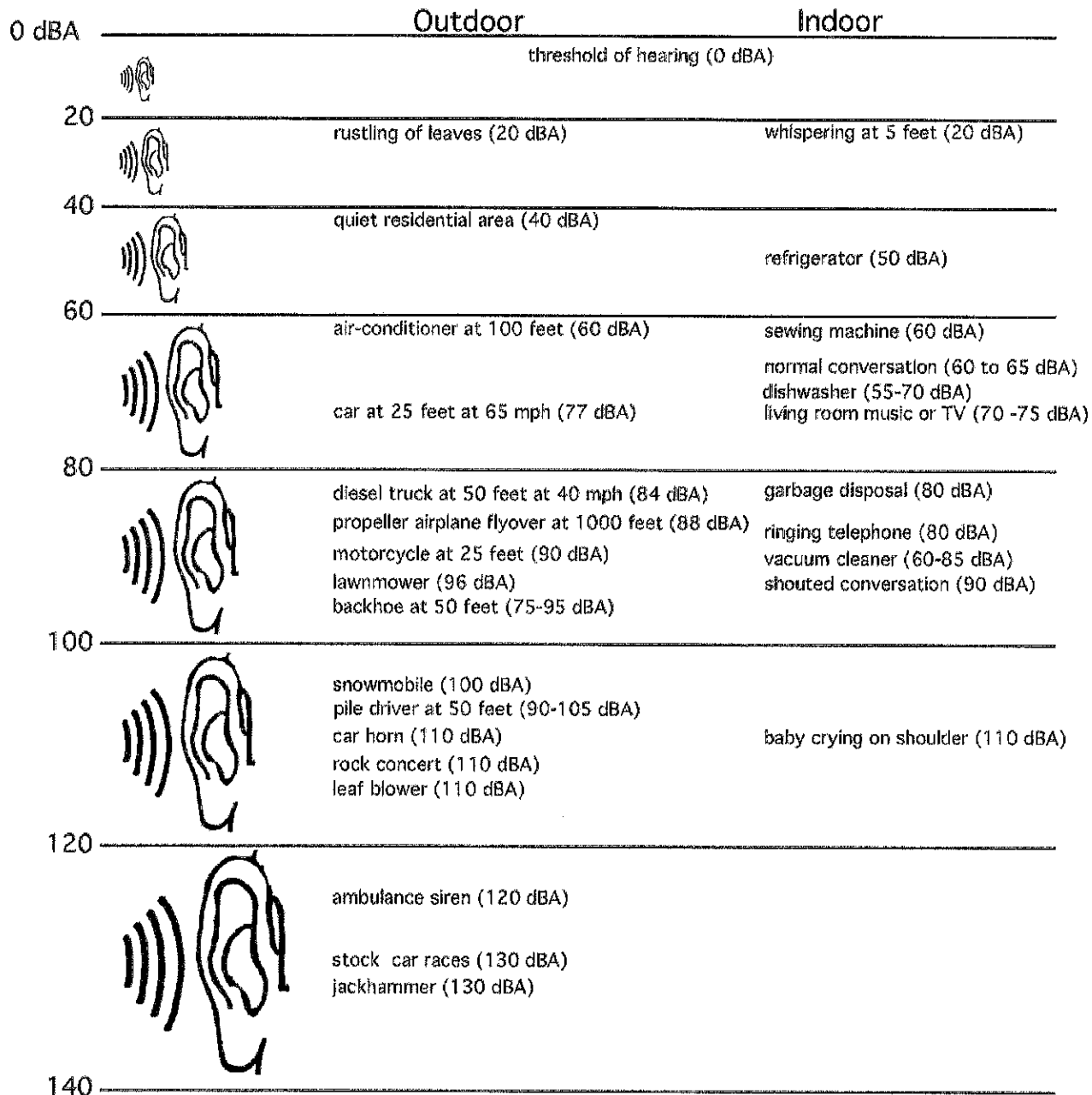


Since the human ear is not equally sensitive to sound at all frequencies, a special frequency-dependent rating scale has been devised to relate noise to human sensitivity. The A-weighted decibel scale (dBA) performs this compensation by discriminating against frequencies in a manner approximating the sensitivity of the human ear. Community noise levels are measured in terms of the "A-weighted decibel," abbreviated dBA. Exhibit 2 provides examples of various noises and their typical A-weighted noise level.

Sound levels decrease as a function of distance from the source as a result of wave divergence, atmospheric absorption and ground attenuation. As the sound wave form travels away from the source, the sound energy is dispersed over a greater area, thereby dispersing the sound power of the wave. Atmospheric absorption also influences the levels that are received by the observer. The greater the distance traveled, the greater the influence and the resultant fluctuations. The degree of absorption is a function of the frequency of the sound as well as the humidity and temperature of the air. Turbulence and gradients of wind, temperature and humidity also play a significant role in determining the degree of attenuation. Intervening topography can also have a substantial effect on the effective perceived noise levels.

Noise has been defined as unwanted sound and it is known to have several adverse effects on people. From these known effects of noise, criteria have been established to help protect the public health and safety and prevent disruption of certain human activities. This criteria is based on such known impacts of noise on people as hearing loss, speech interference, sleep interference, physiological responses and annoyance.

The description, analysis and reporting of community noise levels around communities is made difficult by the complexity of human response to noise and the myriad of noise metrics that have been developed for describing noise impacts. Each of these metrics attempts to quantify noise levels with respect to community response. Most of the metrics use the A-weighted noise level to quantify noise impacts on humans. A-weighting is a frequency weighting that accounts for human sensitivity to different frequencies.



Sources: League For The Hard Of Hearing, www.lhh.org
Handbook of Noise Control, McGraw Hill, Edited by Cyril Harris, 1979
 Measurements by Mestres Greve Associates

Exhibit 2

Typical Noise Levels

Several rating scales have been developed for measurement of community noise. These account for: (1) the parameters of noise that have been shown to contribute to the effects of noise on man, (2) the variety of noises found in the environment, (3) the variations in noise levels that occur as a person moves through the environment, and (4) the variations associated with the time of day. They are designed to account for the known health effects of noise on people described previously. Based on these effects, the observation has been made that the potential for a noise to impact people is dependent on the total acoustical energy content of the noise. A number of noise scales have been developed to account for this observation. The three noise scales commonly used in Newport Beach are the: Equivalent Noise Level (Leq), the maximum sound level (Lmax), and the Community Noise Equivalent Level (CNEL). These scales are described in the following paragraphs.

Leq is the sound level corresponding to a steady-state sound level containing the same total energy as a time-varying signal over a given sample period. Leq is the "energy" average noise level during the time period of the sample. Leq can be measured for any time period, but is typically measured for 1 hour. This 1-hour noise level can also be referred to as the Hourly Noise Level (HNL). It is the energy sum of all the events and background noise levels that occur during that time period.

Lmax is simply the maximum sound level that occurs in any given time period. The Lmax represents an instantaneous sound level, and there is no other second in a given time period which has a louder noise level.

CNEL is the predominant rating scale now in use in California for land use compatibility assessment. The CNEL scale represents a time weighted 24-hour average noise level based on the A-weighted decibel. Time weighted refers to the fact that noise that occurs during certain sensitive time periods is penalized for occurring at these times. The evening time period (7 p.m. to 10 p.m.) penalizes noises by 5 dBA, while nighttime (10 p.m. to 7 a.m.) noises are penalized by 10 dBA. These time periods and penalties were selected to reflect people's increased sensitivity to noise during these time periods. A CNEL noise level may be reported as a "CNEL of 60 dBA," "60 dBA CNEL," or simply "60 CNEL."

1.3 Noise Criteria

A noise ordinance is designed to control unnecessary, excessive and annoying sounds from one parcel of land impacting another parcel of land. Noise ordinance requirements cannot be applied to mobile noise sources when traveling on public roadways, because Federal and state laws preempt their control. However, a noise ordinance does apply to both mobile and stationary noise sources on private property. Newport Beach Ordinance Chapter 10.26 – Community Noise Control comprises the City's Noise Ordinance.

Table 1 presents the City of Newport Noise Ordinance standards. The City of Newport Beach noise criteria are given in terms of Leq and Lmax noise levels. The noise levels specified are

those that are not to be exceeded at a property from noise generated at a nearby property (Table 1). Noise levels are to be measured with A-weighting and a slow time response usually for a 15 minute period. Greater noise levels are permitted during the day (7 a.m. to 10 p.m.) as compared to the nighttime period (10 p.m. to 7 a.m.). These limits are increased if ambient noise levels are higher. The limits are essentially raised to the ambient levels.

Table 1 City Of Newport Beach Noise Ordinance Standards

Daytime		Nighttime	
Leq	Lmax	Leq	Lmax
<i>Zone I - Single, two, or multiple family residential</i>			
55 dBA	75 dBA	50 dBA	70 dBA
<i>Zone II - Commercial</i>			
65 dBA	85 dBA	60 dBA	80 dBA
<i>Zone III - Residential portions of mixed-use properties</i>			
60 dBA	80 dBA	50 dBA	70 dBA
<i>Zone IV - Industrial or manufacturing</i>			
70 dBA	90 dBA	70 dBA	90 dBA

The noise levels generated by Woody's Wharf or any other noise source on private property that impacts the residential portion of the mixed should not exceed those identified for Zone III. This would be measured at the property of the residential property (i.e., the receptor). Specifically at night the noise generated by Woody's Wharf or any other source should not exceed 50 dBA (Leq) or 70 dBA (Lmax) at the residences of the mixed-use development.

1.4 Noise Measurements

Noise levels were made at six sites (Exhibit 1) during the late evening of December 21, 2012 and early morning hours of December 22, 2012. Noise measurements at all sites were performed using Brüel & Kjær Model 2238 automated digital noise data acquisition system and sound meter mounted on a tripod. During the measurements a large windscreen covered the microphone to dampen out the effect of unwanted wind-generated noise, but has no effect on the sound measurement readings. Before and after the measurements were taken, a Brüel & Kjær 4231 calibrator with certification traceable to the National Institute of Standards and Technology was used to calibrate the sound meter to ensure that the measured sound level readings were accurate. Table 2 shows the results of the measurements. The measurements were made at a height of 5 feet except those at Sites 3 and 4. Sites 3 and 4 were measured at 15 feet high, which is the height of the second floor residences in the mixed-use development. The measurements are presented in roughly chronological order, and are grouped by the purpose of the measurement. Measurements at different sites had different purposes. Each of the measurements is discussed following the table.

Table 2 Event Noise Measurements (dBA)

Site	Start Time	End Time	Leq	Lmax	Purpose
Site 5	11:00 p.m.	11:15 p.m.	69.0	84.0	Parking lot
Site 6	11:00 p.m.	11:15 p.m.	66.5	80.8	Newport Boulevard
Site 1	12:03 a.m.	12:14 a.m.	60.0	64.6	Woody dock – deck open
Site 2	12:25 a.m.	12:35 a.m.	60.7	69.6	Commonwealth dock
Site 1	1:07 a.m.	1:17 a.m.	63.7	71.4	Woody dock – deck closed
Site 2	1:14 a.m.	1:24 a.m.	61.4	69.3	Commonwealth dock
Site 3	12:01 a.m.	12:16 a.m.	53.2	62.4	Mixed use residential
Site 4	12:24 a.m.	12:39 a.m.	52.1	66.3	Mixed use residential
Site 3	1:03 a.m.	1:18 a.m.	54.5	64.5	Mixed use residential
Site 4	1:25 a.m.	1:40 a.m.	48.2	59.2	Mixed use residential

Site 5: Edge of Woody's Wharf Parking Lot.

This monitoring location was at the edge of Woody's Wharf parking lot near Newport Boulevard. The primary noise at this site was the traffic on Newport Boulevard. However, the peak noise levels were from people walking by on the sidewalk and yelling. One person caused a peak noise level of 80 dBA while another person reached 83 dBA. One person walking through the parking lot and yelling also reached 83 dBA. It was observed that all cars were valeted parked at Woody's Wharf and that no patrons hung-out in the parking lot. During the quieter traffic times some music coming from the Commonwealth could be heard. No music from Woody's Wharf could be heard, but some conversation from the line waiting to get into Woody's Wharf could occasionally be heard.

Site 6: Near the northeast corner of Newport Boulevard and 26th Street.

This monitoring site was representative of the noise levels experienced by residences living along Newport Boulevard in the mixed-use development. The primary noise source was the traffic passing on Newport Boulevard. Cars passing by could reach 77 dBA. The Lmax of 80.8 was caused by a person yelling as he was walking on the sidewalk. General aviation aircraft was also heard during this period.

Sites 1 and 2: In the channel in front of Woody's Wharf and the Commonwealth.

Site 1 was just off the south dock of Woody's Wharf and Site 2 was just off of the north dock of the Commonwealth. The noise measurements were made in an electric boat (essentially quiet). The boat did drift a little bit and its location had to be corrected occasionally. The measurements at Sites 1 and 2 were first made during the midnight hour with the outside deck at Woody's Wharf open with what appeared to be a capacity crowd on the outside deck. Late in the midnight

hour the operators at Woody's Wharf closed the outside deck area, and once the deck was cleared, the measurements were repeated during the one o'clock hour at Sites 1 and 2. The purpose of the second set of measurements was to see if closing the outside deck would have any effect on the noise levels. The outside deck is connected to the main bar area via a pair of doors. The outside deck is surrounded by a glass wall approximately 6 feet high that acts as a noise barrier. The music is located in the bar area and can be heard in the outside deck area.

During the first set of noise measurements with the outside deck open for patrons, noise from Woody's Wharf could not be heard, but could be heard from the Commonwealth. At Site 1 music from the Commonwealth was commonly in the 60 to 62 dBA range with a strong bass component. An inspection of the Commonwealth was not made, however, it appeared that doors from the Commonwealth bar were open and led to the bar area at the club. When the music was quieter, conversation from both Woody's Wharf and the Commonwealth could be heard at Site 1. The conversation noise from Woody's Wharf appeared to be from the area on the south side of the building, and not the outside deck area. The measurement at Site 2 (with the outside deck open) had similar results to Site 1 in that music from the Commonwealth could be heard but music from Woody's Wharf was inaudible. During the midnight hour measurement at Site 2, an apparent patron came out onto the Commonwealth dock and was yelling. His yelling was responsible for the Lmax of 69.6 dBA.

During the second set of measurements at Sites 1 and 2, the outside patio area at Woody's Wharf was not in use and the doors connecting it to the bar room were closed. The noise levels at Site 1 were slightly higher during this second set of measurements. For example, the Leq noise levels at Site 1 went from 60.0 dBA when the outside deck was open to 63.7 dBA when the outside deck was closed. It appeared that the music was being played louder at the Commonwealth. Music from the Commonwealth was the dominant noise source. Conversation from the Commonwealth could be clearly heard and a minor amount of conversation from Woody's Wharf when the music was not being played. The results were similar at Site 2. The Leq noise levels increased from 60.7 dBA with the deck open to 61.4 dBA with the deck closed. Again, the music from the Commonwealth was the dominant noise source, and music from Woody's Wharf was inaudible. The Lmax noise level was again due to a person at the Commonwealth yelling. The average noise levels for the second measurement at Site 2 was also slightly louder than the first due to the music being played slightly louder at the Commonwealth. But this also clearly shows that the noise from the outside deck area is insignificant and not contributing adversely to overall community noise levels. During the measurement at Site 2, patrons boarded a boat at Woody's Wharf and motored away and it was not audible.

It should be noted that after each measurement set, the noise technician went inside Woody's Wharf to confirm that music was being playing at a level consistent throughout the night and in a manner typical for live DJ music (i.e., loud).

Sites 3 and 4: At the residences in the mixed-use development.

Site 3 is the most southerly of the two residential sites and is the closest to Woody's Wharf. During the first measurement the Leq was 53.2 dBA, which is slightly above the noise ordinance criteria of 50 dBA. (The Lmax ordinance criterion of 70 dBA was never exceeded at Sites 3 or 4.) During the first measurement at Site 3 voices from a boat docked at the Commonwealth

could clearly be heard and was generally in the range of 53 to 58 dBA but going up as high as 62 dBA. The "boom boom" from music could faintly be heard and was generally around 53 dBA. This music noise was from the Commonwealth, and operations at the Commonwealth were the reason that noise levels (Leq) were above 50 dBA at this location. During the first measurement set, the noise levels at Site 4 were similar to those at Site 3, but were due to different sources. At Site 4 distant traffic was audible an around 47 dBA. A boat passed by in the channel (62 dBA), a helicopter flew overhead (66 dBA), and general aviation aircraft (48 dBA) could be heard in the distance. Voices at the boat docks of the Commonwealth could be heard briefly and were about 50 dBA. Music was occasionally audible at Site 4. The noise ordinance level of 50 dBA was exceeded at Site 4 by 2.1 dB during this measurement period. However, it was clear that the noise was above 50 dBA due to the helicopter flyover and boat pass-by and not anything associated with the restaurants/bars in the area.

It should be noted that between Sites 3 and 4, music was being played inside one of the boats docked. The music could be clearly heard for about 70 feet in both directions along the boardwalk, but could not be heard at either Sites 3 or 4.

The measurements at Sites 3 and 4 were repeated with the outside deck at Woody's Wharf closed. The measurements at Site 3 were slightly higher during the second set of measurements. Observations during this period included music from a boat in the channel (57 dBA), voices on boat docked at Commonwealth (ranging from 61 to 64 dBA), music from boat or bars (54 dBA), low bass music most likely from the Commonwealth (54 dBA). The measurements at Site 4 were slightly lower during the second set of measurements. Observations during this period include unidentifiable music from the bar area (49 dBA) and activity from people on the boardwalk (47 to 54 dBA). In general, this was a very quiet period with the distant ocean waves and distant traffic being audible.

1.5 Summary and Conclusions for Monitoring Study

Below is a summary of pertinent observations and conclusions based on our noise measurements.

1. The parking lot is well managed at Woody's Wharf with valet parking and patrons not being allowed to loiter in the lot. (This is a common source of noise complaints from residents.)
2. Patrons coming and going from Woody's Wharf are no louder than people walking along the public sidewalk.
3. Noise levels along Newport Boulevard and experienced at residences along Newport Boulevard can be loud, specifically with average noise levels (Leq) being in the upper 60 dBA range.
4. Music from Woody's Wharf is well contained within the structure and the outside deck area with glass barrier. Music from Woody's Wharf was not audible.
5. Closing the outside deck at Woody's Wharf had no effect on the noise levels. This confirms that noise from the outside deck in surrounding areas is negligible. If the noise levels had gone down when the deck was closed, then that would be a strong indication that the noise from Woody's Wharf was a significant contributor to the outside noise levels. However, the noise levels actually went up slightly indicating that Woody's

Wharf was not a significant noise source and our observation was that the Commonwealth had increased the level of their music slightly.

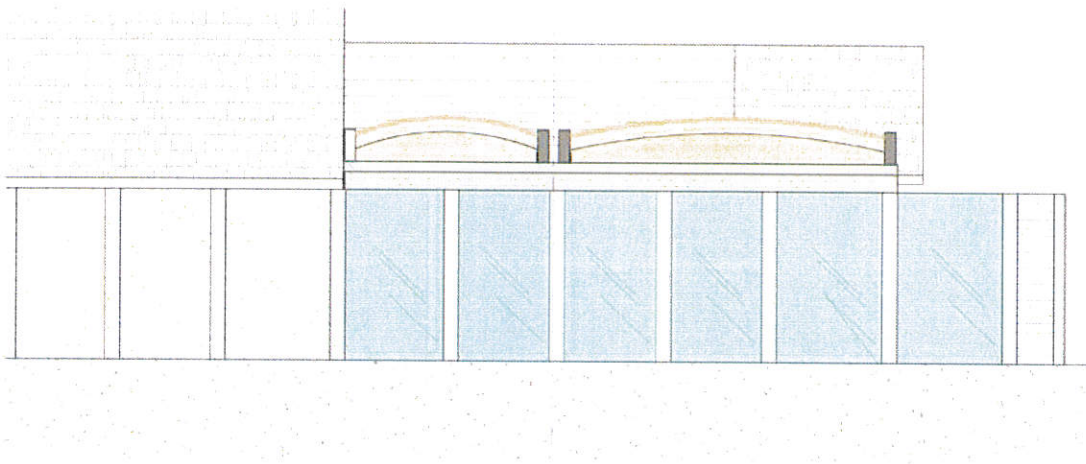
6. Music and noise from the docks of the Commonwealth are audible at the mixed-use residences. At times these sources of noise may exceed 50 dBA (Leq). At other times they may be audible, but not above 50 dBA (Leq).
7. The practice at Woody's Wharf of limiting dock use to patrons arriving and departing on boats (no loitering on boats) appears to be very beneficial to reducing noise levels in the surrounding areas and should be practiced at other bars and restaurants in the area.
8. No noise specific to Woody's Wharf was ever identified at the mixed-use residences. Noise from Woody's Wharf is not audible at the mixed-use residences. Noise from the Commonwealth, local roadways, distant roadways, and the surf were all heard. Noise from Woody's Wharf was not heard.
9. Noise levels at the mixed-use residences can be above 50 dBA (Leq) due to sources in the area other than bars and restaurants. Helicopter overflights, activities on the docks in front of the mixed-use area, activities on the boardwalk, and boats in the channel can all cause noise levels to go above 50 dBA (Leq).

1.6 Effects of New Patio Canopy and Windscreen

Woody's Wharf Restaurant is proposing to add a higher quality canopy than the current canvas canopy. The canvas canopy is used only during the wintertime. The new canopy would be a permanent installation and would incorporate retractable panels. A side view and top view of the canopy is shown in Exhibit 3. The canopy would be closed by 10 p.m. every evening. On colder days the canopy may not be opened or would be closed earlier than 10 p.m.

There are several features of the proposed construction that make this a superior option than the current system of a canvas canopy for part of the year and no patio cover for the remaining portion of the year. Each of the key features is discussed below.

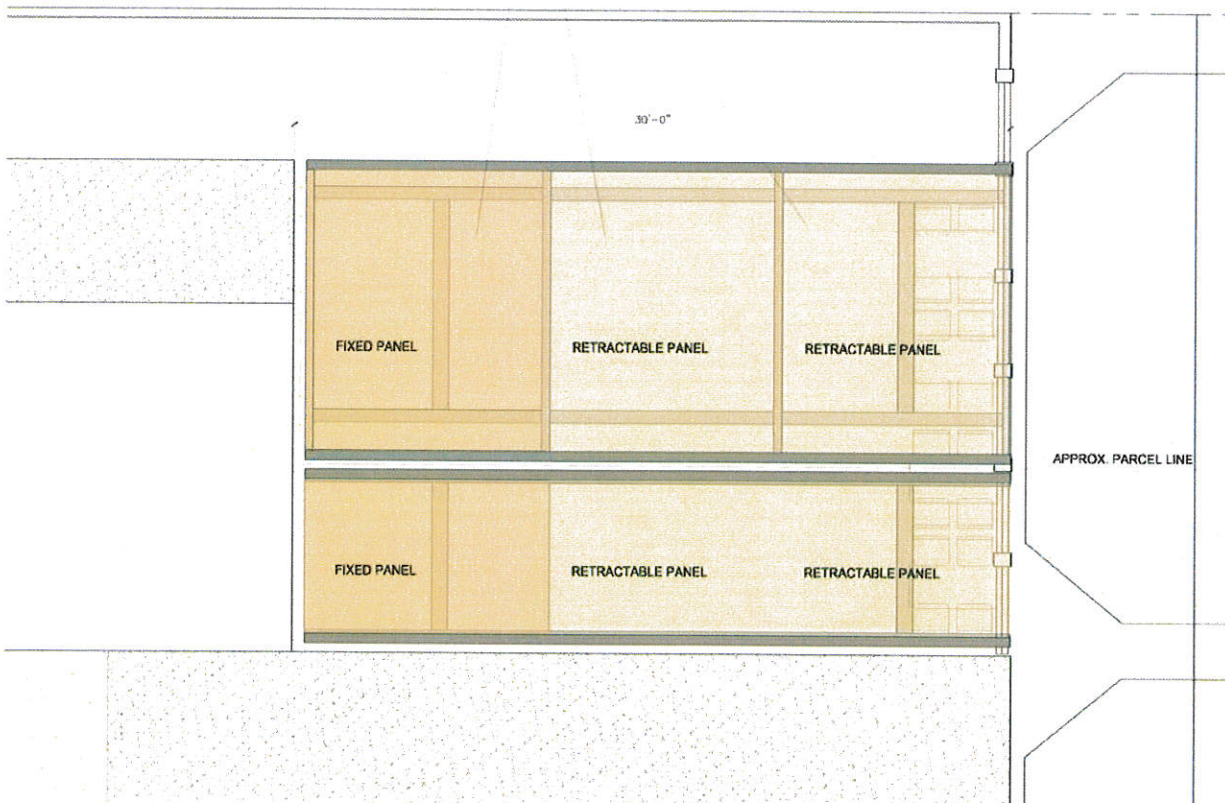
Multi-layer polycarbonate canopy panels. Currently either no cover is in place or a canvas cover is in place. With no cover in place the noise reduction of the cover is obviously zero. Based on the weight of a typical canvas cover, we have calculated that the noise reduction of canvas is only 3 dB. That is the noise is 3 dB less directly above the canvas cover than directly below. The proposed canopy will be composed of a 5/8" thick multi-layer polycarbonate panel. The panels would be composed of 3 layers of polycarbonate that would be separated by two airspaces. The surface density of the panels would be approximately 0.57 lbs. per square foot. However, similar to double pane windows, the air spaces between the polycarbonate panels provide more noise reduction than would be indicated just by the weight. According to one website (<http://www.polycarbonatesheetsinindia.com/question.html>) the multi-layer system being proposed should provide about 21 dB of noise reduction. (Although noise reduction data for polycarbonate panels is scarce, this rating does appear to be consistent with other values reported.) Therefore, the noise rating of roof will be about 21 dB better than an open roof and about 18 dB better than just a canvas cover.



PATIO HARBOR ELEVATION

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER
POLYCARBONATE PANELS, TRANSLUCENT WHITE
COLOR. ADDITIONAL LAYERS CAN BE ADDED TO
DECREASE SOUND TRANSMISSION (POYGAL or
GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS
WINDSCREEN WALL FULL HEIGHT TO
UNDERSIDE OF STRUCTURE TO
REPLACE (E) GLASS SCREEN



PATIO CANOPY - CLOSED

Upgrade to laminated glass windscreen. The glass along the front of the patio (side facing the bay) currently is regular glass. (The existing glass along the side has already been upgraded to laminated.) The proposal is to upgrade the glass along the front of the patio to laminated glass as part of the canopy project. Typical single pane glass ¼" thick has a Sound Transmission Class (STC) rating of 26. Laminated glass of the same thickness has a STC rating of 32. Therefore, upgrading to the laminated glass will reduce the amount of noise coming through the glass by about 6 dB. This is a significant improvement especially when it is combined with the following measure.

Closure of gap between canopy and glass windscreen. Currently there is a gap between the top of the windscreen along the front and the existing canopy. With the new design the windscreen is full height coming up to the bottom of the canopy. Closing gaps significantly improves the amount of noise reduction provided by a structure. As an example, it has been well documented that with a window partially open, the noise reduction of that window provides an outdoor to indoor noise reduction of 12 dB. Closing the window results in the window providing a noise reduction of 20 to 25 dB. A minimum of 8 dB of noise reduction improvement would be expected by closing the gap. This combined with the 6 dB improvement due to the upgraded glass means that the glass barrier could have a total improvement in noise of 14 dB or more.

Our measurements indicated that the noise from Woody's is inaudible at the mixed-use residential area to the north (e.g., Sites 3 and 4 on Exhibit 1). Based on the loudest of the other events measured in this area, the noise levels from Woody's at the mixed use area with a canvas canopy in place could be no louder than the 40 to 45 dBA range (Leq). No improvement in noise levels would be experienced with the proposed canopy when it is in the open position. However, with the canopy closed the noise levels patio area could easily be reduced down to the 26 to 31 dBA range (Leq). These noise levels are well below the Noise Ordinance criteria of 50 dBA (Leq), and would not be audible when the canopy is closed.

A residential area has been approved for the lot just south of Woody's. The future residential area is about 60 feet from the center of the patio area to the closest portion of the residences. Noise measurements were made at the end of the docks (i.e., Sites 1 and 2 on Exhibit 1). The nearest site is about 80 feet from the center of the patio area. The residences, since they are closer, would be about 2.5 dB louder than the measurement sites when adjusted for distance only. It is difficult to estimate what the noise level from Woody's was at Sites 1 and 2 since it was not audible at these sites. Based on the fact that Woody's noise did not add to the total noise environment, the noise from Woody's at Sites 1 and 2 had to have been less than 50 dBA (Leq). With the improved canopy/windscreen, the noise levels at the future residential areas would be no greater than 38.5 dBA (Leq), which is well below the Noise Ordinance limit of 50 dBA (Leq).

In summary, the proposed canopy/windscreen upgrade will reduce noise from the patio area significantly. The noise levels from the patio area will remain well below the Noise Ordinance criteria at both the existing mixed-use residences to the north as well as the future residences to the south.



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24 July 2013

Brenda Wisneski, AICP
Deputy Community Development Director
City of Newport Beach, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

SUBJECT: Acoustical Peer Review
Woody's Wharf – Newport Beach
RSA Project No. 1360613

Dear Brenda:

In accordance with your request, we have reviewed the noise measurement survey prepared by Mestre Greve Associates (MGA) for Woody's Wharf restaurant and bar located at 2318 Newport Blvd. in Newport Beach California. We have included a substantially complete copy of the MGA report edited only by deletion of pages insignificant to our review, and to include footnotes of our comments.

This report is based on our review of the MGA noise measurement survey as well as acoustical measurement data and observations from our 19 July site visit to Woody's Wharf. Acoustical measurements were initiated Friday night at 11:00 pm and ultimately concluded at 12:30 am. As the primary directive was to determine the noise impact and acoustical environment at the three-story mixed use residential building north of Woody's Wharf at the northeast corner of Newport Blvd. and 26th Street, several acoustical measurements were conducted at this property.

To the east of Woody's Wharf is the bay and boat repair yard beyond, to the south is parking and commercial occupancies, and to the west is Newport Blvd. Noise levels in these non-critical areas are not pertinent to our study of the noise environment at the multi-use residential building and therefore were not measured during our site visit and measurement program.

The lot immediately adjacent to the south of Woody's Wharf was under construction and enclosed in construction fences prohibiting access to the boat docks immediately outside Woody's Wharf.

NOISE STANDARDS

As stated in the MGA report, chapter 10.26 titled “Community Noise Control”, the City of Newport Beach Noise Ordinance states the maximum allowable noise levels allowed at a residential or mixed-use residential property line from an adjacent or nearby property is limited to 50 dB(A) Leq, or 70 dB(A) Lmax during the nighttime hours of 10:00 pm to 7:00 am. *(Simplified, the Leq is the A-weighted average sound levels measured for a specific time period and the Lmax is the maximum, typically short duration A-weighted sound level recorded during that period.)*

ACOUSTICAL ENVIRONMENT

During our site visit Friday night, the environment in the general area of Woody’s Wharf and the multi-use residential building consisted of general street vehicular traffic on Newport Blvd. and small masses of pedestrian foot traffic from patrons arriving or departing the nearby American Junkie and Woody’s Wharf nightclubs. The majority of pedestrian traffic activity was observed to occur along Newport Blvd. south of the nightclubs.

Singles, couples, and up to 12 person groups were observed walking on both east and west sidewalks of Newport Blvd directly in front of the multi-use residential building. Raised voices, laughing, and shouting were not uncommon occurrences during our site visit comprising the majority higher noise levels measured. Typically pedestrian traffic flow was constantly moving and loitering was observed only a few times and never for more than a few minutes in the vicinity of the mixed-use residential building.

Several cars, as well as taxis with windows down were observed to be playing loud music and occasionally passengers yelling out of automobile windows to pedestrians was observed.

We observed a few small groups of male nightclub patrons as they wandered to the east end of 26th street to *relieve* themselves between the parked cars. This was accompanied by raised voice conversations and occasional shouting near this south elevation of the mixed-use residential building.

Lines of patrons waiting to enter both nightclubs were noted in the respective parking lots during the duration of our site visit, with a few patrons loitering on the sidewalk of Newport Blvd. Noise from patrons waiting in these lines was not typically audible at the nearby street sidewalk. We noted a fairly constant flow of autos and taxis entering and leaving the parking lots during the nighttime.

During our site visit, we did not observe any commercial or general aviation in the area however the MGA noise survey however did report of one helicopter overflight to occur generating fairly high Lmax levels.

In general, at the southeast corner of the residential building nearest the bay, crowd noise and music generated from the nightclub areas to the north was always audible along with noise from street traffic and pedestrians. The southwest corner of the residential building at the intersection of Newport Blvd. and 26th Street, noise from the nightclubs proper was much less



pronounced due to the considerable noise levels generated by pedestrians and vehicular traffic on Newport Blvd.

MEASURED NOISE LEVELS

Acoustical measurements were conducted by our office at the mixed-use residential property referenced as Site 3, Site 4, and Site 6 in the MGA noise survey and shown in Table 1 and Figure A below. Measurements were conducted by MGA at two different times for Sites 3 and 4 and both results are included in the table.

TABLE 1
Measured Noise Levels

Summary Comparative Measured Noise Levels												
Location	Site 3				Site 4				Site 6			
	Southeast corner of mixed-use residential property adjacent to bay.				Northeast corner of mixed-use residential property adjacent to bay.				Southwest corner of mixed-use residential property at corner of Newport Blvd. and 26 th St.			
Metric	Leq		Lmax		Leq		Lmax		Leq		Lmax	
Conducted by:	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA
Measured Levels dB(A)	59.2	53.2-54.5	66.4	62.4-64.5	49.5	52.1-48.2	61.2	66.3-59.2	66.0	66.5	80.5	80.8

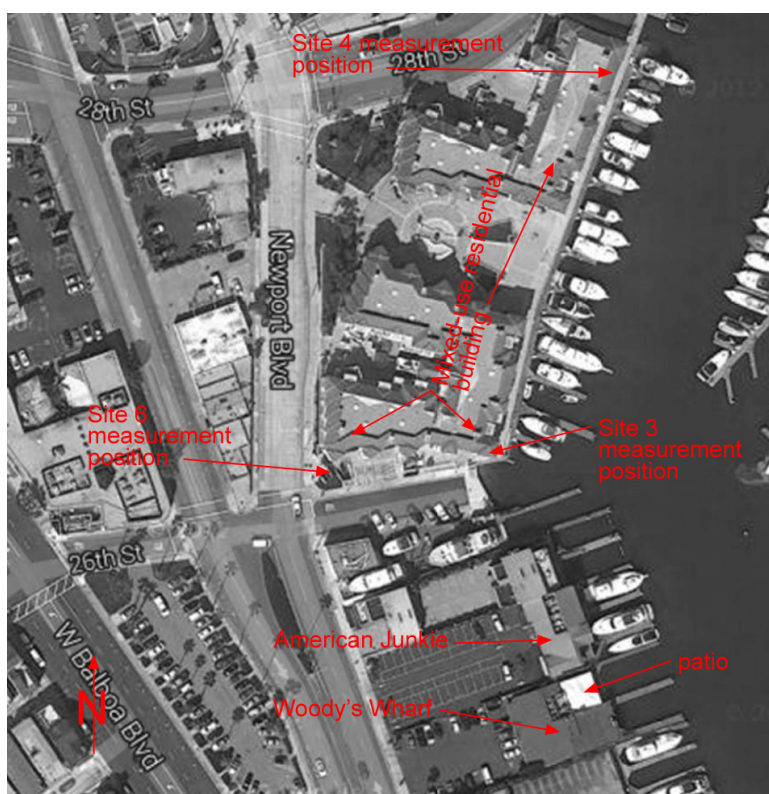


Figure A

Consistent agreement of RSA and MGA measurement results were found at Sites 4 and 6, however at Site 3 our tests indicated levels approximately 5 to 6 dB(A) higher. These higher noise levels during our measurements were due primarily to pedestrian traffic in the immediate area. We are in agreement however with MGA assessment that the noise levels from the nightclubs (in the absence of local noise occurrences) was approximately 53 dB(A) at Site 3 which exceeds the City of Newport Beach 50 dB(A) Leq maximum allowable noise limits.

Data measured during our site visit and the data reported in the MGA noise survey indicated noise levels measured at the mixed-use residential property exceed the maximum allowable 50 dB(A) Leq limits set forth in the City of Newport Beach Noise Ordinance with the exception of Site 4 which was found to be near or at the allowable limits.

PROPOSED MITIGATION MEASURES

It is our understanding that a glass wall currently exists at the perimeter of the exterior patio of Woody's Wharf. The north elevation of this wall facing towards the multi-use residences is reportedly constructed of ¼" thickness laminated glass and the east elevation facing the bay is constructed of ¼" thickness monolithic glass. An operable canvas roof covering over the patio is currently employed when required or desired for weather protection.

The American Junkie nightclub building is located immediately north of Woody's Wharf patio providing substantial beneficial acoustical shielding between Woody's Wharf patio and the south and east elevations of the mixed use residential building. The height of this building is estimated to be at least 25' above grade, effectively breaking the direct line of sight between the majority of Woody's Wharf patio and the residences. This is identified as Path A in Figure B below.

A small "slot" occurs allowing a direct line of sight between the northwest corner of Woody's Wharf patio and the residences, across the parking lot at the west elevation of the American Junkie. This is illustrated as Path B in Figure B.

To accurately calculate the dB(A) noise reduction provided by structures or materials, an octave bandwidth analysis must be conducted which includes the transmission loss for each octave band from 63Hz to 8kHz for each material of interest. The total dB(A) noise reduction is also dependent on the spectral characteristics of the octave band source noise spectrum therefore, the octave band source levels must also be utilized in the calculations. (In this case, octave band crowd noise and music levels measured during our site visit.)

It is not possible to accurately calculate the A-weighted noise reduction, the resultant A-weighted sound levels, or compare acoustical performance of a building element via simple subtraction of STC ratings or other single number level metric.



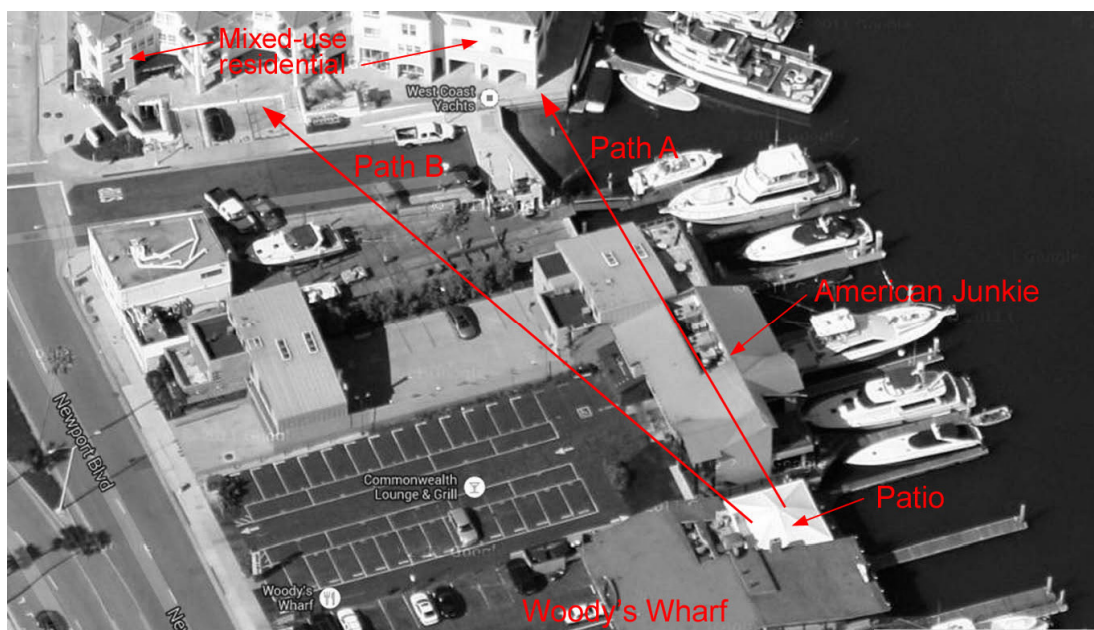


Figure B

EXISTING ACOUSTICAL CONDITIONS

Table 2 below shows the octave band noise reduction provided by the existing conditions for both Paths A and B. At Path A, the octave band noise reduction from the acoustic shielding provided by the American Junkie building only, ranges from 11 dB at 63Hz to 20 dB at 8000Hz. The overall A-weighted noise reduction provided by this structure for music and crowd noise from the patio is calculated to be 20 dB(A) for the “worst-case” higher elevation 3rd floor residences.

At Path B, the octave band acoustic shielding is provided by the existing glass barrier at the north side of the patio ranges from 5 dB at 63Hz to 13 dB at 8000Hz for a total noise reduction of crowd and music noise of 9 dB(A) at the 3rd floor residences.

TABLE 2

Existing Noise Reduction - Woody's Wharf Patio to 3rd Floor Residences

Existing Conditions	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path A Acoustic shielding provided by American Junkie building to 3 rd level residences	11	14	17	20	20	20	20	20	20 dB(A)
Path B Acoustic shielding provided by glass wall at Woody's Wharf patio.	5	5	6	6	7	8	10	13	9 dB(A)

This suggests that residences which are shielded from the patio via the American Junkie building would be 11 dB(A) quieter {20 dB(A) – 9 dB(A)} than the unshielded areas of the residential building with direct line of sight to the patio.



ACOUSTICAL CONDITIONS W/ PROPOSED PATIO ENCLOSURE

Table 3 shows the calculated noise reduction at Path A with the implementation of the full height laminated glass walls and polycarbonate roof system. The octave band transmission loss characteristics for the ¼" laminated glass and the polycarbonate roof system were input into a proprietary computer program, and based on the total areas of each material, the transmission loss of the composite assembly was determined.

The total noise reduction provided by the composite roof and wall constructions at the patio range from 11 dB at 63Hz to 39 dB at 8000 Hz for a total of 26 dB(A) noise reduction at the 3rd level residences. Additionally, this path will also receive the beneficial acoustical shielding of the American Junkie building resulting in a total 44 dB(A) reduction of patio generated noise levels.

TABLE 3
Predicted Noise Reduction Path A - Woody's Wharf Patio to 3rd Floor Residences

Proposed Enclosed Patio	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path A Acoustic shielding provided by American Junkie building	11	14	17	20	20	20	20	20	20 dB(A)
Sound transmission loss provided by ¼" laminated glass*	20	25	27	30	35	35	39	40	34 dB(A)
Predicted sound transmission loss of 0.57#/sqft polycarbonate canopy	8	12	13	18	24	29	34	38	23 dB(A)
Calculated composite sound transmission loss provided by fully enclosed patio	11	15	16	21	27	31	36	39	26 dB(A)
Total noise reduction provided by enclosed patio and shielding from American Junkie building	22	29	33	41	47	51	56	59	44 dB(A)

* ¼" laminated glass comprised of (1/8" thick glass - .030" PVB innerlayer – 1/8" thick glass

In summary, constructing the proposed patio enclosure as currently detailed will increase the noise reduction (or decrease the noise levels) from activity at Woody's Wharf patio via Path A from the current 20 dB(A) to 44 dB(A) with the enclosure resulting in noise levels at the 3rd floor residential units 24 dB(A) lower than present due only to Woody's Wharf patio generated noise only.

Table 4 shows the calculated noise reduction at Path B with the implementation of the full height laminated glass and polycarbonate roof system. The total noise reduction provided by the composite roof and wall constructions provides 26 dB(A) noise reduction at the 3rd level residences.



TABLE 4
Predicted Noise Reduction Path B - Woody's Wharf Patio to 3rd Floor Residences

Proposed Enclosed Patio	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path B Sound transmission loss provided by ¼" laminated glass (1/8" gl-.030" PVB innerlayer- 1/8" gl)	20	25	27	30	35	35	39	40	34 dB(A)
Predicted sound transmission loss provided by 0.57#/sqft polycarbonate canopy	8	12	13	18	24	29	34	38	23 dB(A)
Calculated composite sound transmission loss provided by fully enclosed patio	11	15	16	21	27	31	36	39	26 dB(A)

At Path B, the noise reduction will increase from the current 9 dB(A) provided by the glass wall only, to 26 dB(A) noise reduction due to the patio enclosure for a total noise reduction of Woody's Wharf patio generated noise 17 dB(A) lower than presently experienced at the worst case 3rd level residences.

Again, the predicted reduction in noise levels at the residential units relates only to noise generated on Woody's Wharf patio.

CONCLUSION & DISCUSSION

Several noise level measurements were conducted by MGA at Sites 1 and 2 from an electric boat near the end of the boat docks approximately 80' from the centerline of the center of the patio. It was reported that music and noise from the nightclubs comprised the ambient background noise levels, not traffic or pedestrians on Newport Blvd.

When Woody's Wharf patio was at an apparent full capacity crowd, noise levels of approximately 61 dB(A) were measured. The same measurements were conducted again with the patio and exterior doors to the Woody's Wharf bar closed. The noise levels were essentially unchanged for both conditions suggesting that the noise generated by the operation of Woody's Wharf patio does not significantly contribute to the ambient noise levels in the area.

If noise levels of 61 dB(A) were measured with Woody's Wharf patio open and closed, the contribution of the patio noise to the overall ambient must theoretically be at least 10 decibels less than the measured 61 dB(A). Based on these data, noise from Woody's Wharf patio should not exceed 51 dB(A) when measured 80' from the center of the patio.

NOISE LEVELS AT EXISTING MIXED-USE BUILDING

The closest residential unit to the patio is located at a distance approximately 225' to the north. Extrapolating noise levels of 51 dB(A) at 80' from the patio to a distance of 225' at the residence results in a reduction of 9 dB(A) due to the increased distance. The noise levels at the residences from Woody's Wharf should therefore be 42 dB(A) {51 dB(A) – 9 dB(A)}.



With the construction of the patio enclosure completed, noise levels from the Woody's Wharf patio should be decreased from present conditions by 17 dB(A) at Path B and 24 dB(A) at Path A. This substantially satisfies the noise requirements set forth in Chapter 10.26 of The City of Newport Beach noise ordinance.

FUTURE RESIDENTIAL AREA SOUTH OF WOODY'S WHARF

Assuming 51 dB(A) noise levels from the Woody's Wharf patio when measured at an approximate 80' distance, the noise levels at the south property line 60' from the patio would be approximately 3 dB(A) greater, or 54 dB(A). We anticipate that the acoustical shielding provided by the Woody's Wharf building structure between the patio and the southerly property line would provide at least 10 dB(A) of additional attenuation at lower elevations resulting in patio-generated noise levels of no more than 44 dB(A).

Therefore at grade elevations, the predicted 44 dB(A) noise levels at the residential property immediately south of Woody's Wharf would satisfy the 50 dB(A) Leq maximum allowable noise levels of the City of Newport Beach noise ordinance.

If the proposed residential structure is multiple stories in elevation, the proposed patio canopy must be closed to satisfy the nighttime 50 dB(A) Leq maximum levels allowed by the noise ordinance at the higher elevations.

Note:

In summary, the patio and proposed enclosure should satisfy the requirements of Chapter 10.26 Community Noise Control of the City of Newport Beach ordinance for both the existing multi-use residential building to the north, and the proposed residential construction to the south.

That said, based on our site visit measurements and observations, the noise levels at the multi-use residential building are generated via pedestrian and vehicular traffic on Newport Blvd., not from Woody's Wharf patio proper. It seems more prudent that Chapter 10.28 titled "Loud and Unreasonable Noise" would be better able to control excessive noise levels from the nightclub patrons in the area of the mixed-use residential building.

This concludes our report and review of the noise measurement survey for Woody's Wharf prepared by Mestre Greve Associates. If you have any questions, please feel free to call our office.

Sincerely yours,

RS Acoustics Inc.



Robert Schmidt, Principal Consultant

Enclosures: MGA report w/ RSA edits

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1.0 EXISTING SETTING

1.1 Project Description

Woody's Wharf is a restaurant and bar located at 2318 Newport Boulevard in the City of Newport Beach (Exhibit 1). Live DJ music is played inside in the bar on Thursday, Friday, and Saturday nights. The bar room is open to an outside patio area via doors that are usually open, but remain closed after 10:00 p.m. other than when customers and employees are entering and exiting. The outside area is surrounded by a glass barrier approximately 6 feet high. The outside patio area is also covered for part of the year with a canvas canopy. The restaurant has a parking lot in the front of the building which contains a valet parking operation on the DJ music nights and at other times when peak demand warrant the valet. The restaurant also has boat docks in the front of the restaurant. This dock area is monitored by restaurant personnel and patrons are not allowed to hangout on the docks after 10 p.m. Guests with boats are permitted to dock their boats and enter the restaurant, but not to stay on their boats after 10 p.m. Outside on the south side of the restaurant is small smoking area where patrons can gather.

Another restaurant/bar is located directly north of Woody's Wharf called the Commonwealth¹. This restaurant also has music. Other sources of noise in the area are other restaurant operations, traffic on Newport Boulevard, traffic on more distant roadways, boats traveling up and down the channel in front of Woody's Wharf, people staying on boats docked in the area, aircraft, and police helicopters.

Complaints have been voiced regarding noise potentially from Woody's Wharf. The purpose of this study is to document the noise in the area, and determine the contribution of Woody's Wharf to the overall noise levels experienced in the area. The focus of the monitoring is the mixed-use development to the north (refer to Exhibit 1). The second and third floors of the mixed-use development are residences, which are the source of the noise complaints. The Commonwealth, a single-family residence, and a small shipyard are located between the residences and Woody's Wharf.

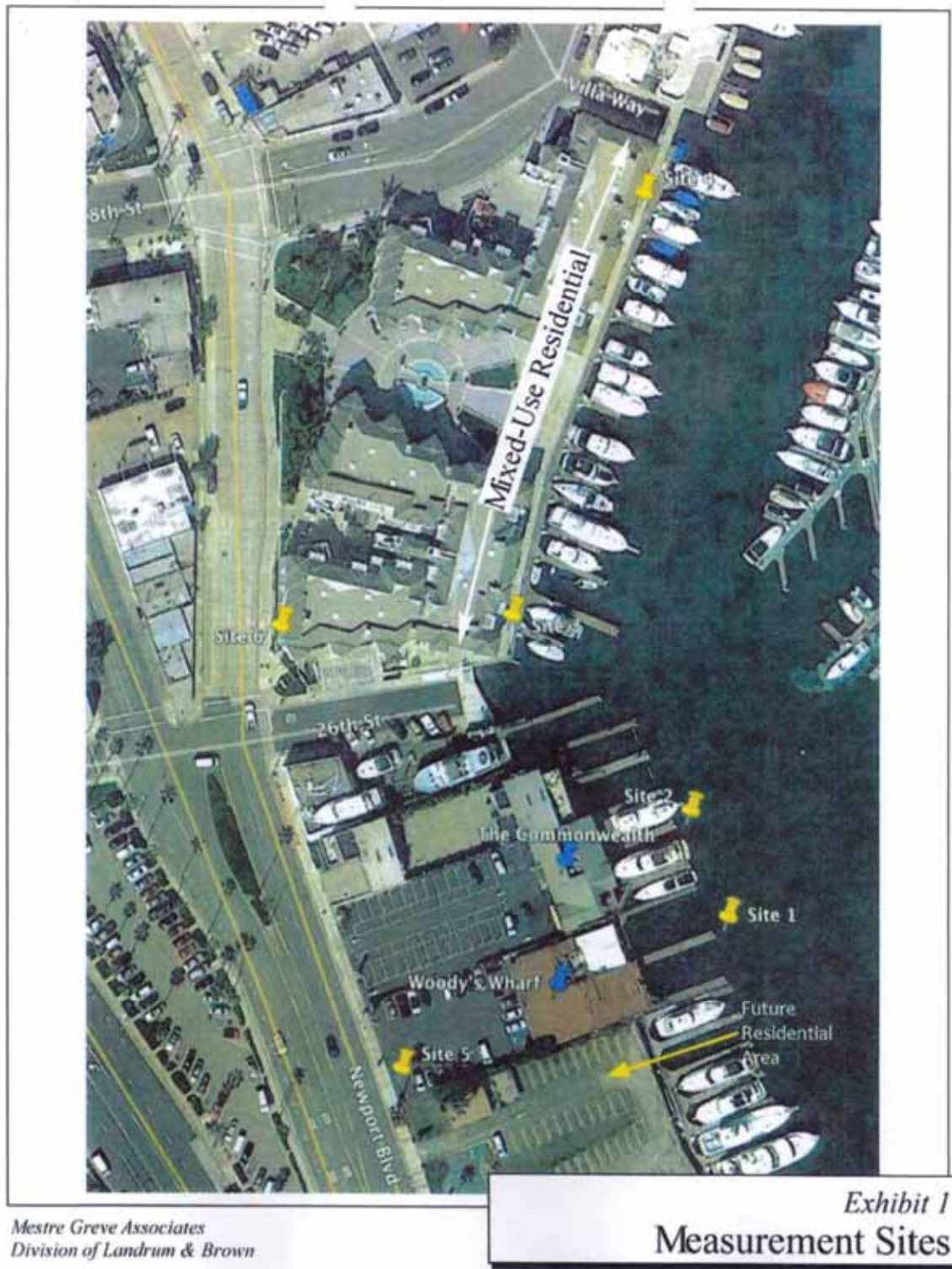
Noise measurements were taken at six sites on Friday, December 21, 2012. The sites measured are shown on Exhibit 1. Woody's Wharf was in full operation during the measurements with a capacity crowd. This report presents the methodology and results of the noise measurement survey. Noise levels are contrasted and compared to the City's Noise Ordinance.

1.2 Background Information on Noise

1.2.1 Noise Criteria Background

Sound is technically described in terms of the loudness (amplitude) of the sound and frequency (pitch) of the sound. The standard unit of measurement of the loudness of sound is the decibel (dB). Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dB higher than another is judged to be twice as loud; and 20 dB higher four times as loud; and so forth. Everyday sounds normally range from 30 dB (very quiet) to 100 dB (very loud).

¹ Restaurant adjacent to Woody's Wharf referred to as the Commonwealth in this report has been changed to "American Junkie".



Since the human ear is not equally sensitive to sound at all frequencies, a special frequency-dependent rating scale has been devised to relate noise to human sensitivity. The A-weighted decibel scale (dBA) performs this compensation by discriminating against frequencies in a manner approximating the sensitivity of the human ear. Community noise levels are measured in terms of the "A-weighted decibel," abbreviated dBA. Exhibit 2 provides examples of various noises and their typical A-weighted noise level.

Sound levels decrease as a function of distance from the source as a result of wave divergence, atmospheric absorption and ground attenuation. As the sound wave form travels away from the source, the sound energy is dispersed over a greater area, thereby dispersing the sound power of the wave. Atmospheric absorption also influences the levels that are received by the observer. The greater the distance traveled, the greater the influence and the resultant fluctuations. The degree of absorption is a function of the frequency of the sound as well as the humidity and temperature of the air. Turbulence and gradients of wind, temperature and humidity also play a significant role in determining the degree of attenuation. Intervening topography can also have a substantial effect on the effective perceived noise levels.

Noise has been defined as unwanted sound and it is known to have several adverse effects on people. From these known effects of noise, criteria have been established to help protect the public health and safety and prevent disruption of certain human activities. This criteria is based on such known impacts of noise on people as hearing loss, speech interference, sleep interference, physiological responses and annoyance.

The description, analysis and reporting of community noise levels around communities is made difficult by the complexity of human response to noise and the myriad of noise metrics that have been developed for describing noise impacts. Each of these metrics attempts to quantify noise levels with respect to community response. Most of the metrics use the A-weighted noise level to quantify noise impacts on humans. A-weighting is a frequency weighting that accounts for human sensitivity to different frequencies.

Several rating scales have been developed for measurement of community noise. These account for: (1) the parameters of noise that have been shown to contribute to the effects of noise on man, (2) the variety of noises found in the environment, (3) the variations in noise levels that occur as a person moves through the environment, and (4) the variations associated with the time of day. They are designed to account for the known health effects of noise on people described previously. Based on these effects, the observation has been made that the potential for a noise to impact people is dependent on the total acoustical energy content of the noise. A number of noise scales have been developed to account for this observation. The three noise scales commonly used in Newport Beach are the: Equivalent Noise Level (Leq), the maximum sound level (Lmax), and the Community Noise Equivalent Level (CNEL). These scales are described in the following paragraphs.

Leq is the sound level corresponding to a steady-state sound level containing the same total energy as a time-varying signal over a given sample period. Leq is the “energy” average noise level during the time period of the sample. Leq can be measured for any time period, but is typically measured for 1 hour². This 1-hour noise level can also be referred to as the Hourly Noise Level (HNL). It is the energy sum of all the events and background noise levels that occur during that time period.

Lmax is simply the maximum sound level that occurs in any given time period. The Lmax represents an instantaneous sound level, and there is no other second in a given time period which has a louder noise level.

CNEL is the predominant rating scale now in use in California for land use compatibility assessment. The CNEL scale represents a time weighted 24-hour average noise level based on the A-weighted decibel. Time weighted refers to the fact that noise that occurs during certain sensitive time periods is penalized for occurring at these times. The evening time period (7 p.m. to 10 p.m.) penalizes noises by 5 dBA, while nighttime (10 p.m. to 7 a.m.) noises are penalized by 10 dBA. These time periods and penalties were selected to reflect people's increased sensitivity to noise during these time periods. A CNEL noise level may be reported as a “CNEL of 60 dBA,” “60 dBA CNEL,” or simply “60 CNEL.”³

1.3 Noise Criteria

A noise ordinance is designed to control unnecessary, excessive and annoying sounds from one parcel of land impacting another parcel of land. Noise ordinance requirements cannot be applied to mobile noise sources when traveling on public roadways, because Federal and state laws preempt their control. However, a noise ordinance does apply to both mobile and stationary noise sources on private property. Newport Beach Ordinance Chapter 10.26 — Community Noise Control comprises the City's Noise Ordinance.

Table 1 presents the City of Newport Noise Ordinance standards. The City of Newport Beach noise criteria are given in terms of Leq and Lmax noise levels. The noise levels specified are

² 15 min Leq, not hourly is utilized in Chapter 10.26 of the City of Newport Beach Noise Ordinance.

³ CNEL is not applicable to noise levels described or measured in this report.

those that are not to be exceeded at a property from noise generated at a nearby property (Table 1). Noise levels are to be measured with A-weighting and a slow time response usually for a 15 minute period. Greater noise levels are permitted during the day (7 a.m. to 10 p.m.) as compared to the nighttime period (10 p.m. to 7 a.m.). These limits are increased if ambient noise levels are higher. The limits are essentially raised to the ambient levels.

Table 1 City 01 Newport Beach Noise Ordinance Standards

Daytime		Nighttime	
Leg	Lmax	Leg	Lmax
<i>Zone I - Single, two, or multiple family residential</i>			
55 dBA	75 dBA	50 dBA	70 dBA
<i>Zone II- Commercial</i>			
65 dBA	85dBA	60dBA	80dBA
<i>Zone III - Residential portions of mixed-use properties</i>			
60 dBA	80dBA	50dBA	70dBA
<i>Zone IV Industrial or manufacturing</i>			
70dBA	90dBA	70dBA	90dBA

The noise levels generated by Woody's Wharf or any other noise source on private property that impacts the residential portion of the mixed should not exceed those identified for Zone III. This would be measured at the property of the residential property (i.e., the receptor). Specifically at night the noise generated by Woody's Wharf or any other source should not exceed 50 dBA (Leq) or 70 dBA (Lmax) at the residences of the mixed-use development.

1.4 Noise Measurements

Noise levels were made at six sites (Exhibit 1) during the late evening of December 21, 2012 and early morning hours of December 22, 2012. Noise measurements at all sites were performed using Bruel & Kjaer Model 2238 automated digital noise data acquisition system and sound meter mounted on a tripod. During the measurements a large windscreen covered the microphone to dampen out the effect of unwanted wind-generated noise, but has no effect on the sound measurement readings. Before and after the measurements were taken, a Bruel & Kjaer 4231 calibrator with certification traceable to the National Institute of Standards and Technology was used to calibrate the sound meter to ensure that the measured sound level readings were accurate. Table 2 shows the results of the measurements. The measurements were made at a height of 5 feet except those at Sites 3 and 4. Sites 3 and 4 were measured at 15 feet high, which is the height of the second floor residences in the mixed-use development. The measurements are presented in roughly chronological order, and are grouped by the purpose of the measurement. Measurements at different sites had different purposes. Each of the measurements is discussed following the table.

Table 2 Event Noise Measurements (dBA)

Site	Start Time	End Time	Leq	Lmax	Purpose
Site 5 ⁴	11:00 p.m.	11:15 p.m.	69.0	84.0	Parking lot
Site 6	11:00 p.m.	11:15 p.m.	66.5	80.8	Newport Boulevard
Site 1 ⁵	12:03 a.m.	12:14 a.m.	60.0	64.6	Woody dock — deck open
Site 2 ⁶	12:25 a.m.	12:35 a.m.	60.7	69.6	Commonwealth dock
Site 1 ⁷	1:07 a.m.	1:17 a.m.	63.7	71.4	Woody dock — deck closed
Site 2	1:14 a.m.	1:24 a.m.	61.4	69.3	Commonwealth dock
Site 3	12:01 a.m.	12:16 a.m.	53.2	62.4	Mixed use residential
Site 4	12:24 a.m.	12:39 a.m.	52.1	66.3	Mixed use residential
Site 3	1:03 a.m.	1:18 a.m.	54.5	64.5	Mixed use residential
Site 4	1:25 a.m.	1:40 a.m.	48.2	59.2	Mixed use residential

Site 5: Edge of Woody's Wharf Parking Lot.

This monitoring location was at the edge of Woody's Wharf parking lot near Newport Boulevard. The primary noise at this site was the traffic on Newport Boulevard. However, the peak noise levels were from people walking by on the sidewalk and yelling. One person caused a peak noise level of 80 dBA while another person reached 83 dBA. One person walking through the parking lot and yelling also reached 83 dBA. It was observed that all cars were valet parked at Woody's Wharf and that no patrons hung-out in the parking lot⁸. During the quieter traffic times some music coming from the Commonwealth could be heard. No music from Woody's Wharf could be heard, but some conversation from the line waiting to get into Woody's Wharf could occasionally be heard.⁹

Site 6: Near the northeast corner of Newport Boulevard and 26th Street.

This monitoring site was representative of the noise levels experienced by residences living along Newport Boulevard in the mixed-use development. The primary noise source was the traffic passing on Newport Boulevard. Cars passing by could reach 77 dBA. The Lmax of 80.8 was caused by a person yelling as he was walking on the sidewalk. General aviation aircraft was also heard during this period.¹⁰

Sites 1 and 2: In the channel in front of Woody's Wharf and the Commonwealth.

Site 1 was just off the south dock of Woody's Wharf and Site 2 was just off of the north dock of the Commonwealth. The noise measurements were made in an electric boat (essentially quiet). The boat did drift a little bit and its location had to be corrected occasionally. The measurements at Sites 1 and 2 were first made during the midnight hour with the outside deck¹¹ at Woody's Wharf open with what appeared to be a capacity crowd on the outside deck. Late in the midnight

⁴ Sites 5 and 6 are shown measured at the same time. Only one sound level meter is described in section 1.4. Explain

⁵ Sites 1 and 3 are shown with overlapping measurement time periods. Explain.

⁶ Sites 7 and 4 have overlapping time periods. Explain

⁷ Sites 1 and 3 have overlapping time periods. Explain

⁸ True in general, however during our visit, approximately 40-50 patrons were waiting in line to enter Woody's Wharf. They were however typically inaudible on Newport Blvd due to pedestrians on the street.

⁹ Typically Inaudible during our site visit.

¹⁰ This position has the "worst case" noise exposure level, however noise levels from pedestrian traffic typically generated a much higher noise impact than that of traffic. See RSA Inc. report for additional info.

¹¹ Assumed "deck" is the same as the "patio".

hour the operators at Woody's Wharf closed the outside deck area, and once the deck was cleared, the measurements were repeated during the one o'clock hour at Sites 1 and 2. The purpose of the second set of measurements was to see if closing the outside deck would have any effect on the noise levels. The outside deck is connected to the main bar area via a pair of doors. The outside deck is surrounded by a glass wall approximately 6 feet high that acts as a noise barrier. The music is located in the bar area and can be heard in the outside deck area.

During the first set of noise measurements with the outside deck open for patrons, noise from Woody's Wharf could not be heard, but could be heard from the Commonwealth. At Site 1 music from the Commonwealth was commonly in the 60 to 62 dBA range with a strong bass component. An inspection of the Commonwealth was not made, however, it appeared that doors from the Commonwealth bar were open and led to the bar area at the club. When the music was quieter, conversation from both Woody's Wharf and the Commonwealth could be heard at Site 1. The conversation noise from Woody's Wharf appeared to be from the area on the south side of the building, and not the outside deck area. The measurement at Site 2 (with the outside deck open) had similar results to Site 1 in that music from the Commonwealth could be heard but music from Woody's Wharf was inaudible. During the midnight hour measurement at Site 2, an apparent patron came out onto the Commonwealth dock and was yelling. His yelling was responsible for the Lmax of 69.6 dBA.

During the second set of measurements at Sites 1 and 2, the outside patio area at Woody's Wharf was not in use and the doors connecting it to the bar room were closed. The noise levels at Site 1 were slightly higher during this second set of measurements. For example, the Leq noise levels at Site 1 went from 60.0 dBA when the outside deck was open to 63.7 dBA when the outside deck was closed. It appeared that the music was being played louder at the Commonwealth. Music from the Commonwealth was the dominant noise source. Conversation from the Commonwealth could be clearly heard and a minor amount of conversation from Woody's Wharf when the music was not being played. The results were similar at Site 2. The Leq noise levels increased from 60.7 dBA with the deck open to 61.4 dBA with the deck closed. Again, the music from the Commonwealth was the dominant noise source, and music from Woody's Wharf was inaudible. The Lmax noise level was again due to a person at the Commonwealth yelling. The average noise levels for the second measurement at Site 2 was also slightly louder than the first due to the music being played slightly louder at the Commonwealth. But this also clearly shows that the noise from the outside deck area is insignificant and not contributing adversely to overall community noise levels. During the measurement at Site 2, patrons boarded a boat at Woody's Wharf and motored away and it was not audible.

It should be noted that after each measurement set, the noise technician went inside Woody's Wharf to confirm that music was being playing at a level consistent throughout the night and in a manner typical for live DJ music (i.e., loud).¹²

Sites 3 and 4: At the residences in the mixed-use development.

Site 3 is the most southerly of the two residential sites and is the closest to Woody's Wharf. During the first measurement the Leq was 53.2 dBA¹³, which is slightly above the noise ordinance criteria of 50 dBA. (The Lmax ordinance criterion of 70 dBA was never exceeded at Sites 3 or 4.) During the first measurement at Site 3 voices from a boat docked at the

¹² Were any interior noise levels measured during the evening? If so, what were they?

¹³ We measured 59.2 dB(A) at position 3 due to noise from nightclubs and pedestrian traffic. Lmax was 66.4 dB(A) at this location.

could clearly be heard and was generally in the range of 53 to 58 dBA but going up as high as 62 dBA. The "boom boom" from music could faintly be heard and was generally around 53 dBA. This music noise was from the Commonwealth, and operations at the Commonwealth were the reason that noise levels (Leq) were above 50 dBA at this location. During the first measurement set, the noise levels at Site 4 were similar to those at Site 3, but were due to different sources. At Site 4 distant traffic was audible around 47 dBA. A boat passed by in the channel (62 dBA), a helicopter flew overhead (66 dBA), and general aviation aircraft (48 dBA) could be heard in the distance. Voices at the boat docks of the Commonwealth could be heard briefly and were about 50 dBA. Music was occasionally audible at Site 4. The noise ordinance level of 50 dBA was exceeded at Site 4 by 2.1 dB during this measurement period. However, it was clear that the noise was above 50 dBA due to the helicopter flyover and boat pass-by and not anything associated with the restaurants/bars in the area.¹⁴

It should be noted that between Sites 3 and 4, music was being played inside one of the boats docked. The music could be clearly heard for about 70 feet in both directions along the boardwalk, but could not be heard at either Sites 3 or 4.

The measurements at Sites 3 and 4 were repeated with the outside deck at Woody's Wharf closed. The measurements at Site 3 were slightly higher during the second set of measurements. Observations during this period included music from a boat in the channel (57 dBA), voices on boat docked at Commonwealth (ranging from 61 to 64 dBA), music from boat or bars (54 dBA), low bass music most likely from the Commonwealth (54 dBA). The measurements at Site 4 were slightly lower during the second set of measurements. Observations during this period include unidentifiable music from the bar area (49 dBA) and activity from people on the boardwalk (47 to 54 dBA). In general, this was a very quiet period with the distant ocean waves and distant traffic being audible.

1.5 Summary and Conclusions for Monitoring Study

Below is a summary of pertinent observations and conclusions based on our noise measurements.

1. The parking lot is well managed at Woody's Wharf with valet parking and patrons not being allowed to loiter in the lot. (This is a common source of noise complaints from residents.)¹⁵
2. Patrons coming and going from Woody's Wharf are no louder than people walking along the public sidewalk.
3. Noise levels along Newport Boulevard and experienced at residences along Newport Boulevard can be loud, specifically with average noise levels (Leq) being in the upper 60 dBA range.¹⁶
4. Music from Woody's Wharf is well contained within the structure and the outside deck area with glass barrier. Music from Woody's Wharf was not audible.
5. Closing the outside deck at Woody's Wharf had no effect on the noise levels. This confirms that noise from the outside deck in surrounding areas is negligible. If the noise levels had gone down when the deck was closed, then that would be a strong indication that the noise from Woody's Wharf was a significant contributor to the outside noise levels. However, the noise levels actually went up slightly indicating that Woody's

¹⁴ We measured 49.5 dB(A) at site 4 which is in substantial agreement with MGA reported data.

¹⁵ We're unaware of the actual residential complaints however we found that noise from Woody's Wharf parking lot to be indistinguishable or inaudible at the residences.

¹⁶ Due primarily to pedestrian traffic and vehicular traffic.

Wharf was not a significant noise source and our observation was that the Commonwealth had increased the level of their music slightly.¹⁷

6. Music and noise from the docks of the Commonwealth are audible at the mixed-use residences. At times these sources of noise may exceed 50 dBA (Leq). At other times they may be audible, but not above 50 dBA (Leq).
7. The practice at Woody's Wharf of limiting dock use to patrons arriving and departing on boats (no loitering on boats) appears to be very beneficial to reducing noise levels in the surrounding areas and should be practiced at other bars and restaurants in the area.¹⁸
8. No noise specific to Woody's Wharf was ever identified at the mixed-use residences. Noise from Woody's Wharf is not audible at the mixed-use residences. Noise from the Commonwealth, local roadways, distant roadways, and the surf were all heard. Noise from Woody's Wharf was not heard.¹⁹
9. Noise levels at the mixed-use residences can be above 50 dBA (Leq) due to sources in the area other than bars and restaurants. Helicopter overflights, activities on the docks in front of the mixed-use area, activities on the boardwalk, and boats in the channel can all cause noise levels to go above 50 dBA (Leq).²⁰

1.6 Effects of New Patio Canopy and Windscreen

Woody's Wharf Restaurant is proposing to add a higher quality canopy than the current canvas canopy. The canvas canopy is used only during the wintertime. The new canopy would be a permanent installation and would incorporate retractable panels. A side view and top view of the canopy is shown in Exhibit 3. The canopy would be closed by 10p.m. every evening. On colder days the canopy may not be opened or would be closed earlier than 10 p.m.

There are several features of the proposed construction that make this a superior option than the current system of a canvas canopy for part of the year and no patio cover for the remaining portion of the year. Each of the key features is discussed below.

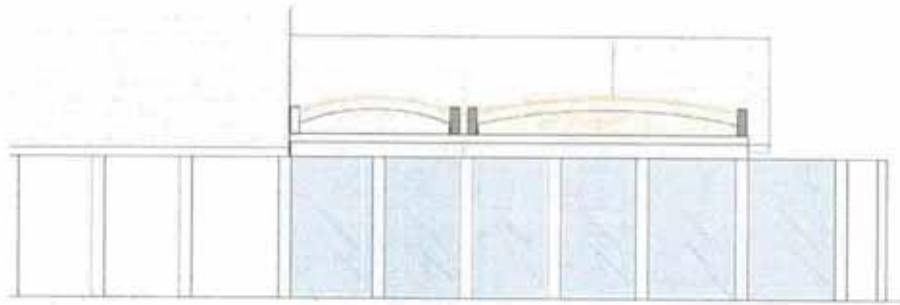
Multi-layer polycarbonate canopy panels. Currently either no cover is in place or a canvas cover is in place. With no cover in place the noise reduction of the cover is obviously zero. Based on the weight of a typical canvas cover, we have calculated that the noise reduction of canvas is only 3 dB. That is the noise is 3 dB less directly above the canvas cover than directly below. The proposed canopy will be composed of a 5/8" thick multi-layer polycarbonate panel. The panels would be composed of 3 layers of polycarbonate that would be separated by two airspaces. The surface density of the panels would be approximately 0.57 lbs. per square foot. However, similar to double pane windows, the air spaces between the polycarbonate panels provide more noise reduction than would be indicated just by the weight. According to one website (<http://www.nolvcarbonateshectsinindia.com/question.html>) the multi-layer system being proposed should provide about 21 dB of noise reduction. (Although noise reduction data for polycarbonate panels is scarce, this rating does appear to be consistent with other values reported.) Therefore, the noise rating of roof will be about 21 dB better than an open roof and about 18 dB better than just a canvas cover.

¹⁷ We concur that the exterior deck of Woody's Wharf seemed to have little impact on noise levels experienced at the residential building.

¹⁸ Noise from patrons arriving via boats has little effect on the overall noise levels experienced at the residences.

¹⁹ We agree, although surf noise was not audible during our measurements. Noise generated specifically by Woody's Wharf could not be discerned at the residences.

²⁰ At site 3, the measured 59.2 dB(A) Leq was due to both music and crowd noise from the nightclubs along with vehicular and pedestrian traffic noise on Newport Blvd. Aircraft overflights didn't occur and boat traffic was insignificant and non-contributory to the measured ambient Leq levels.



PATIO HARBOR ELEVATION

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER
POLYCARBONATE PANELS, TRANSLUCENT WHITE
COLOR. ADDITIONAL LAYERS CAN BE ADDED TO
DECREASE SOUND TRANSMISSION (POYGAL or
GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS
WINDSCREEN WALL FULL HEIGHT TO
UNDERSIDE OF STRUCTURE TO
REPLACE (E) GLASS SCREEN



PATIO CANOPY - CLOSED

Upgrade to laminated glass windscreen. The glass along the front of the patio (side facing the bay) currently is regular glass. (The existing glass along the side has already been upgraded to laminated.) The proposal is to upgrade the glass along the front of the patio to laminated glass as part of the canopy project. Typical single pane glass 1/4" thick has a Sound Transmission Class (STC) rating of 26²¹. Laminated glass of the same thickness has a STC rating of 32²². Therefore, upgrading to the laminated glass will reduce the amount of noise coming through the glass by about 6 dB²³. This is a significant improvement especially when it is combined with the following measure.

Closure of gap between canopy and glass windscreen. Currently there is a gap between the top of the windscreen along the front and the existing canopy. With the new design the windscreen is full height coming up to the bottom of the canopy. Closing gaps significantly improves the amount of noise reduction provided by a structure. As an example, it has been well documented that with a window partially open, the noise reduction of that window provides an outdoor to indoor noise reduction of 12 dB. Closing the window results in the window providing a noise reduction of 20 to 25 dB. A minimum of 8 dB of noise reduction improvement would be expected by closing the gap. This combined with the 6 dB improvement due to the upgraded glass means that the glass barrier could have a total improvement in noise of 14 dB or more.

Our measurements indicated²⁴ that the noise from Woody's is inaudible at the mixed-use residential area to the north (e.g., Sites 3 and 4 on Exhibit 1). Based on the loudest of the other events measured in this area, the noise levels from Woody's at the mixed use area with a canvas canopy in place could be no louder than the 40 to 45 dBA range (Leq). No improvement in noise levels would be experienced with the proposed canopy when it is in the open position²⁵. However, with the canopy closed the noise levels patio area could easily be reduced down to the 26 to 31 dBA range (Leq). These noise levels are well below the Noise Ordinance criteria of 50 dBA (Leq), and would not be audible when the canopy is closed.

A residential area has been approved for the lot just south of Woody's. The future residential area is about 60 feet from the center of the patio area to the closest portion of the residences. Noise measurements were made at the end of the docks (i.e., Sites 1 and 2 on Exhibit 1). The nearest site is about 80 feet from the center of the patio area. The residences, since they are closer, would be about 2.5 dB louder than the measurement sites when adjusted for distance only. It is difficult to estimate what the noise level from Woody's was at Sites 1 and 2 since it was not audible at these sites. Based on the fact that Woody's noise did not add to the total noise environment, the noise from Woody's at Sites 1 and 2 had to have been less than 50 dBA (Leq). With the improved canopy/windscreen, the noise levels at the future residential areas would be no greater than 38.5 dBA (Leq), which is well below the Noise Ordinance limit of 50 dBA (Leq).

In summary, the proposed canopy/windscreen upgrade will reduce noise from the patio area significantly. The noise levels from the patio area will remain well below the Noise Ordinance criteria at both the existing mixed-use residences to the north as well as the future residences to the south.

²¹ Monsanto/Riverbank Labs test data shows 1/4" monolithic glass achieves acoustical rating of STC-31.

²² Monsanto/Riverbank laboratory test data shows 1/4" laminated glass achieves acoustical rating of STC-35.

²³ Difference of 4 STC rating points per Monsanto/Riverbank test data.

²⁴ Due to other high-level noise sources in the area.

²⁵ Noise reduction would be increased by closing the canopy from 9 dB(A) to 26 dB(A) at Path B. See RSA report. No increase in noise reduction should occur at Path A with the canopy closed.

Attachment No. PC 7

Site Photos





WOODY'S RULES
NO OUTSIDE ALCOHOL
NO OUTSIDE CIGARETTES
VIOLATORS WILL BE
REQUESTED TO LEAVE

GUEST USERS
DO NOT BLOCK
OTHER USERS

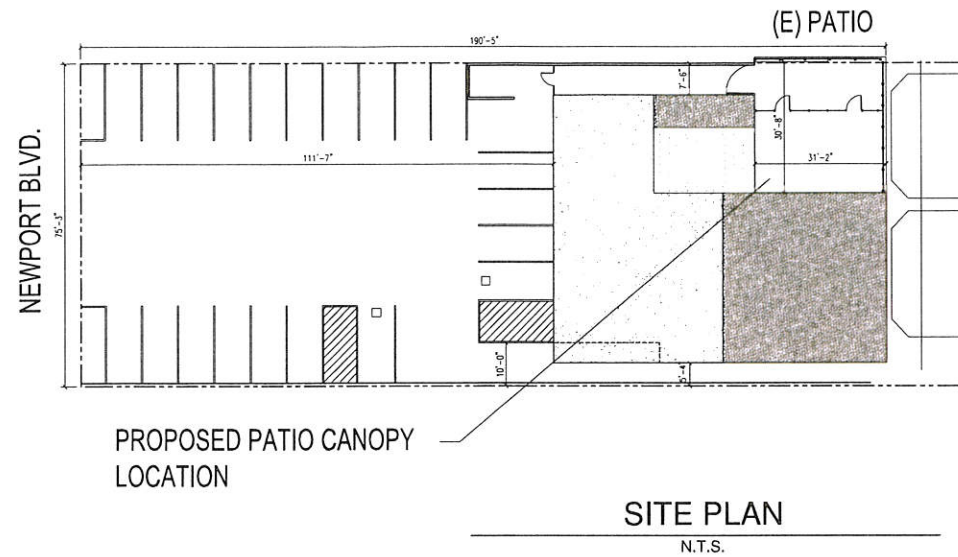
WOODY'S RULES
NO OUTSIDE ALCOHOL
NO OUTSIDE CIGARETTES
VIOLATORS WILL BE
REQUESTED TO LEAVE





Attachment No. PC 8

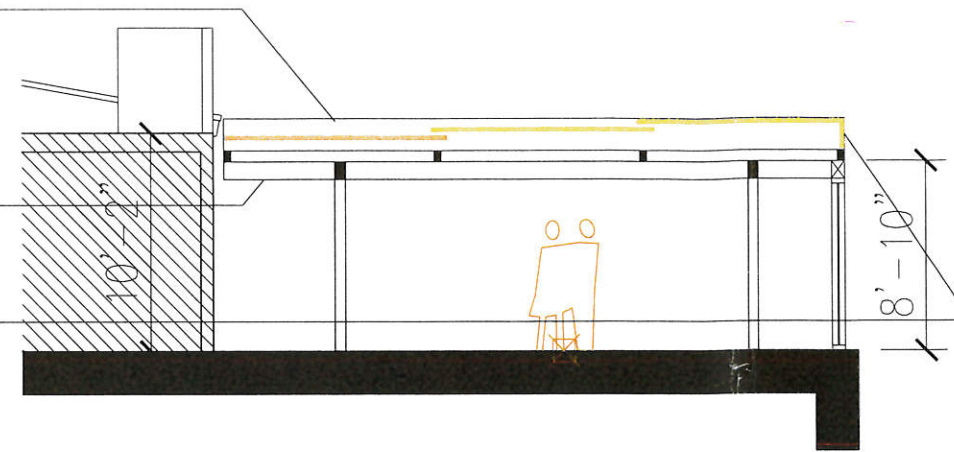
Project Plans – site plan, floor plan and
patio cover



(N) J. MILLER CANVAS, INC. "SkyView Curve" RETRACTABLE CANOPY

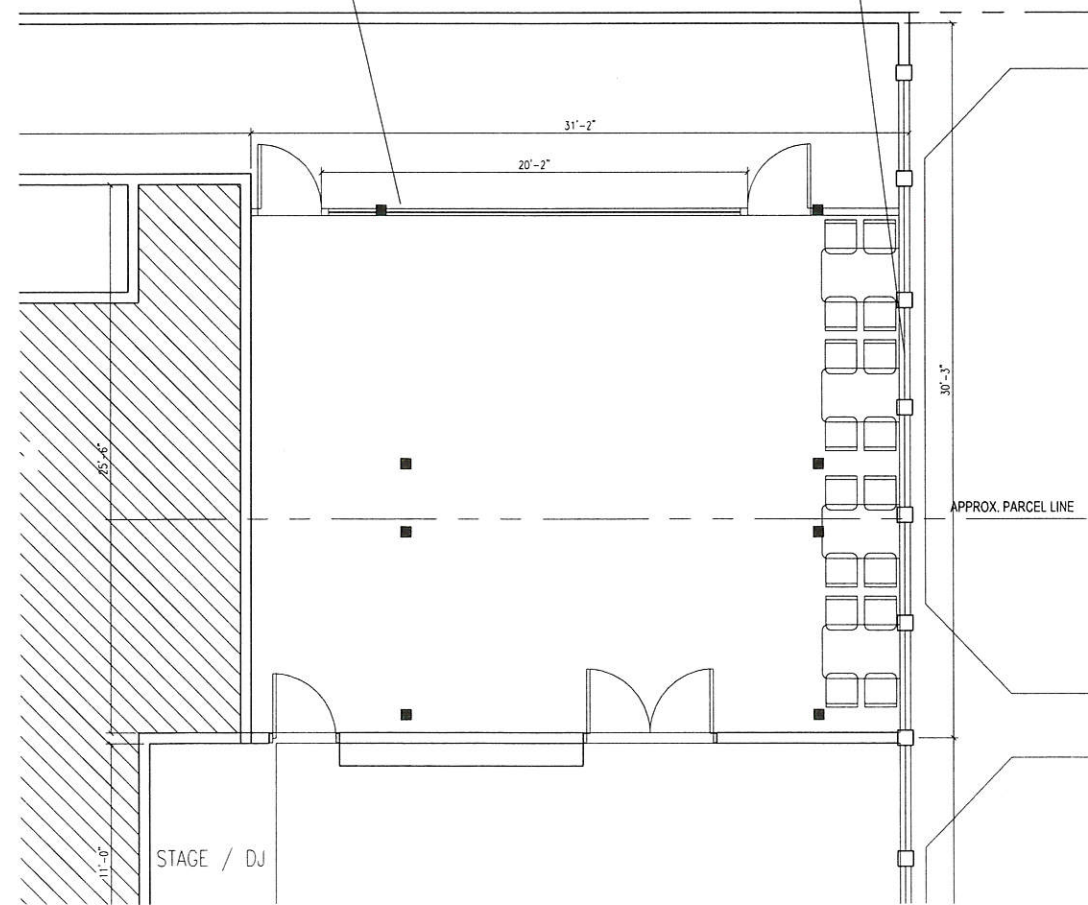
(N) 8"X10" ESTIMATED SIZE TUBE STEEL CANOPY STRUCTURE W/ CANTILEVERED BEAMS, TYP..

(N) CANOPY END CAP PANEL TO ENCLOSE PATIO SPACE



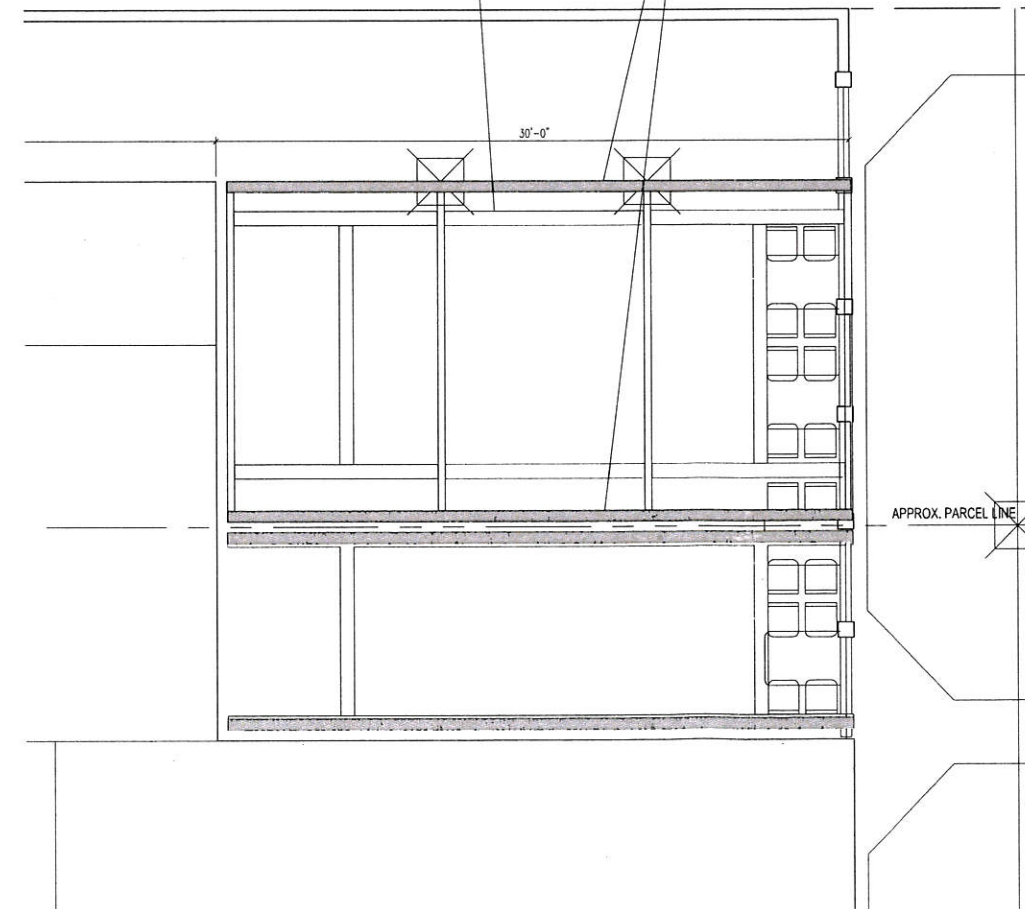
(N) 6"X6" ESTIMATED SIZE TUBE STEEL COLS., TYP.

(N) INSULATED OR LAMINATED GLASS WINDSCREEN WALL FULL HEIGHT TO UNDERSIDE OF STRUCTURE TO REPLACE (E) SCREEN.



(N) 8"X10" ESTIMATED SIZE TUBE STEEL CANOPY STRUCTURE W/ CANTILEVERED BEAMS, TYP..

(N) J. MILLER CANVAS, INC. "SkyView Curve" RETRACTABLE CANOPY TRACK, TYP.



r h a
robinson hill architecture, inc.
A California Corporation
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web www.rhainc.net

Michael David Robinson: C-20731
John Steven Hill: C-23553

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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

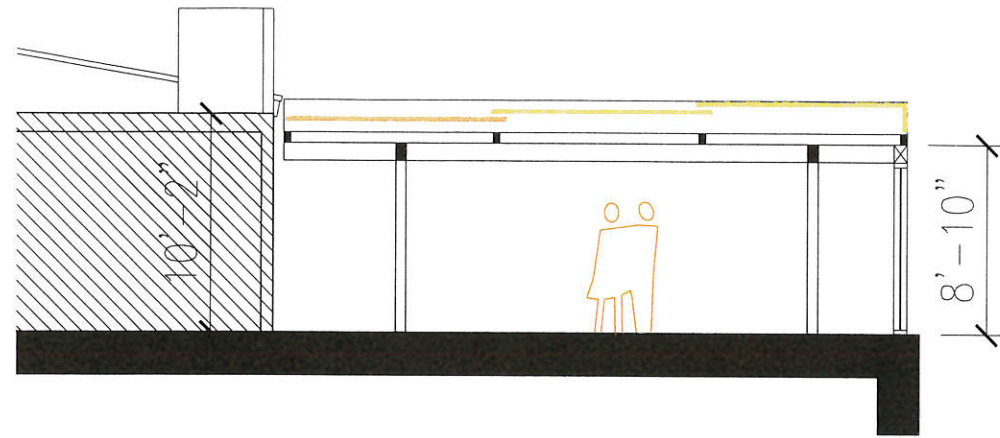
Submittal Dates
Issue Date 04.10.13
Issue Date 05.28.13

Job Number:

Sheet Title:
PATIO CANOPY STUDY

Sheet No.:

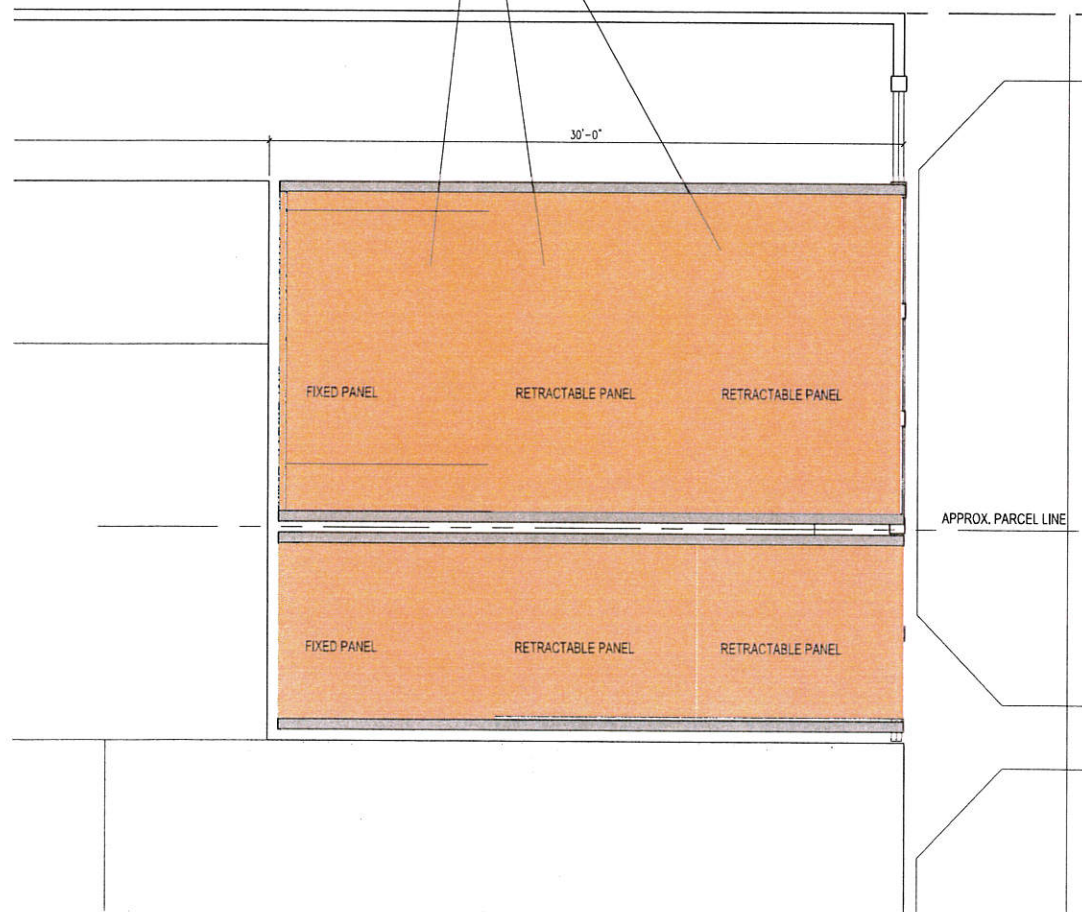
A1



PATIO SECTION

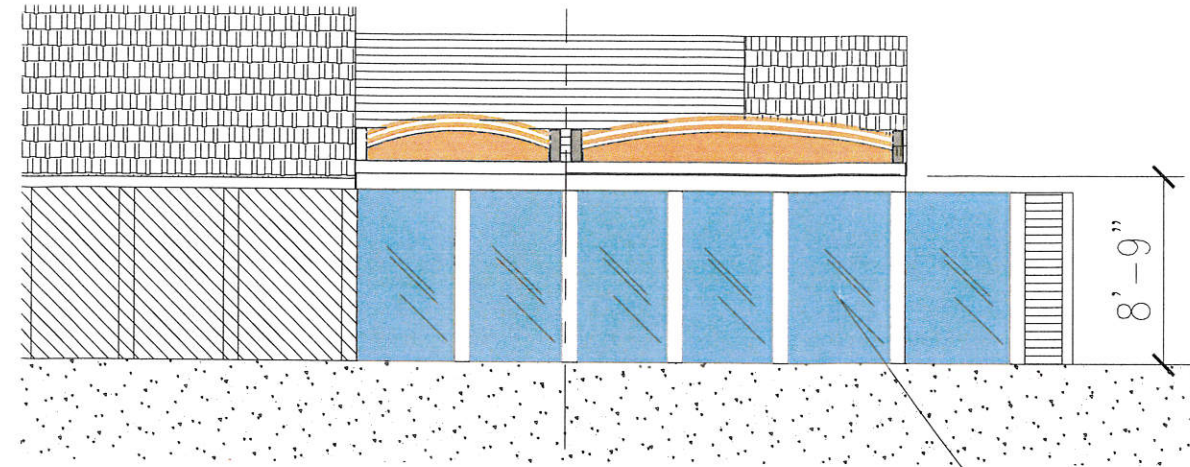
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(N) J. MILLER CANVAS, INC. "SkyView Curve" RETRACTABLE CANOPY, TYP.



PATIO CANOPY - CLOSED

SCALE: 1/4"=1'-0"

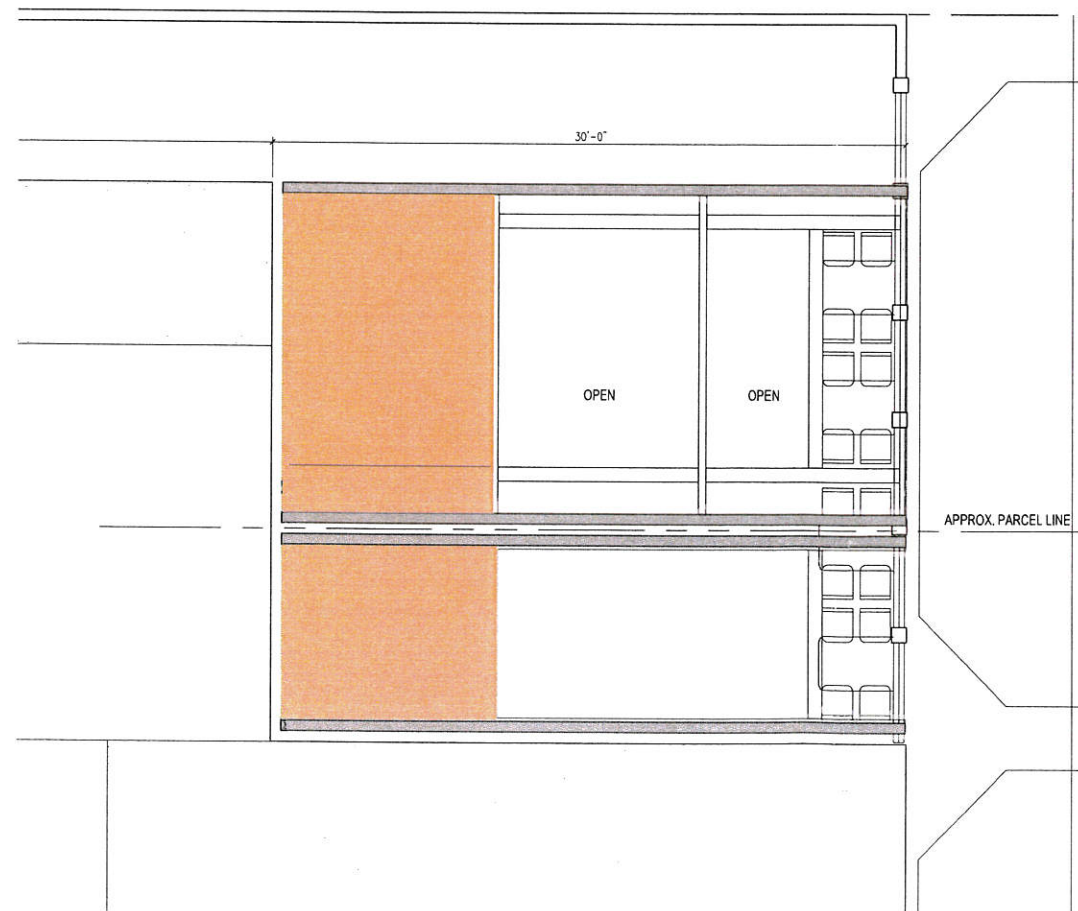


PATIO HARBOR ELEVATION

SCALE: 1/4"=1'-0"

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER POLYCARBONATE PANELS, TRANSLUCENT WHITE COLOR. ADDITIONAL LAYERS CAN BE ADDED TO DECREASE SOUND TRANSMISSION (POYGAL or GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS WINDSCREEN WALL FULL HEIGHT TO UNDERSIDE OF STRUCTURE TO REPLACE (E) GLASS SCREEN



PATIO CANOPY OPEN

SCALE: 1/4"=1'-0"

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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF
RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

Submittal Dates	
Issue Date	04.10.13
Issue Date	05.28.13

Job Number:

Sheet Title:
PATIO CANOPY STUDY

Sheet No.:

A2



Spago, Beverly Hills
J Miller Canvas, Inc. "SkyView Curve" System



Spago, Beverly Hills
J Miller Canvas, Inc. "SkyView Curve" System



Sandy's, Huntington Beach
J Miller Canvas, Inc. "SkyView" System



Sandy's, Huntington Beach
J Miller Canvas, Inc. "SkyView" System

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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF
RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

Submittal Dates	
Issue Date	04.10.13
Issue Date	05.28.13

Job Number:

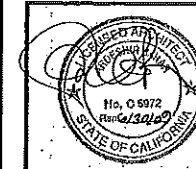
Sheet Title:
J MILLER CANVAS
INSTALLATIONS

Sheet No.:

PA2011-055 for UP2011-010 VA2013-006
2318 Newport Boulevard
Martin Potts, MPA, Inc., Woody's Wharf

A3

3151 Airway Ave., B2
Costa Mesa, CA 92626
PHONE: (714) 751-1130
FAX: (714) 751-9066



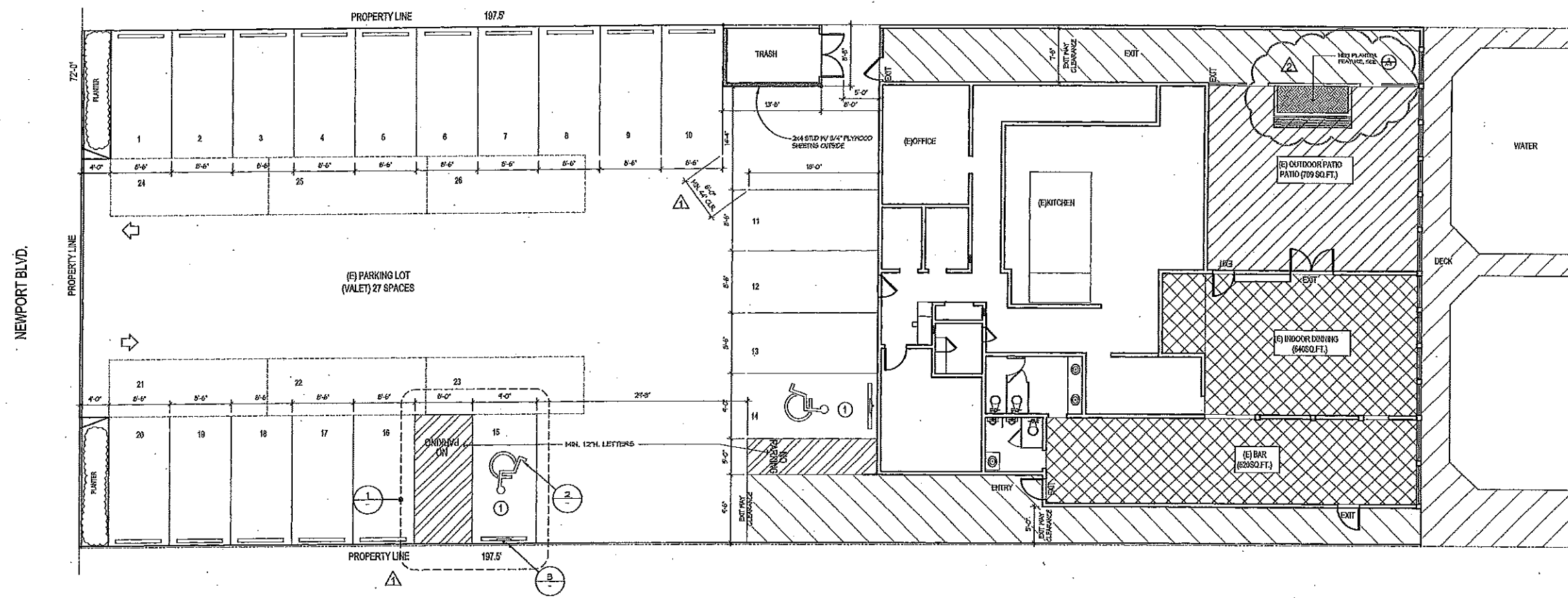
Woody's Wharf
2378 Newport Blvd.
Newport Beach, CA

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[illegible]

REVISION	
1	11-0-07 PLAN CHECK
2	12-14-07 PLAN CHECK
DATE	
OCT. 1, 2007	
-	
SHEET	
A-1	

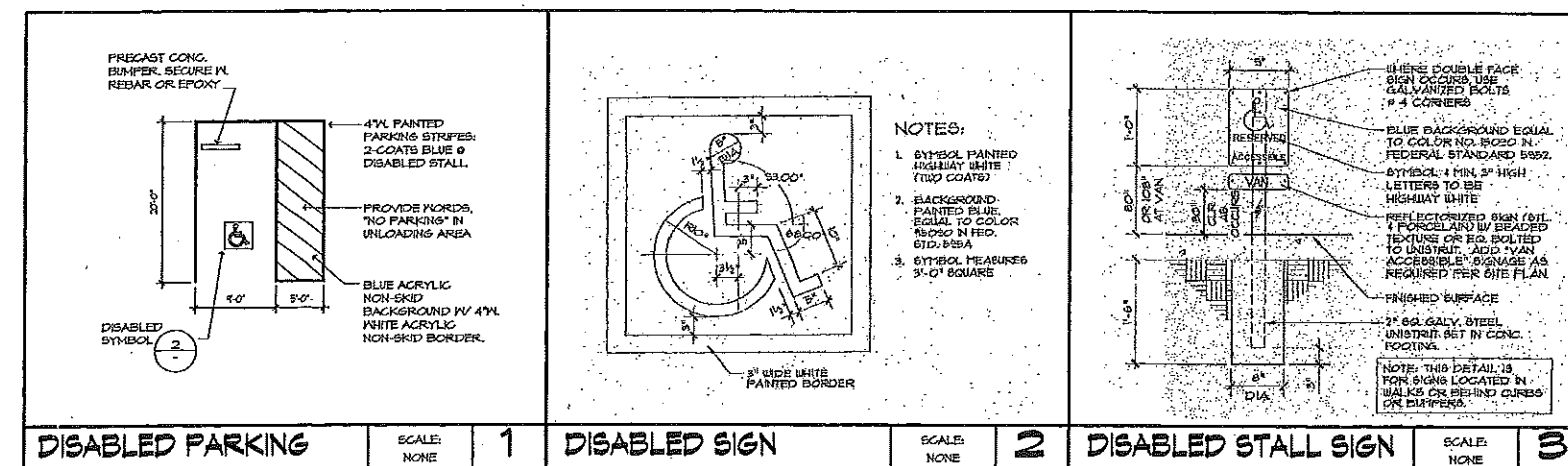
- SAK



SCALE: 1/8"=1'-0"

GENERAL NOTES:

1. GIVE CONTRACTOR TO PROVIDE A DETECTABLE PAVING PRODUCT SAMPLE TO THE ENGINEER PRIOR TO APPROVAL OF COLOR CONTRAST WITH EXISTING SURFACE.
2. AN ADDITIONAL SIGN SHALL ALSO BE POSTED IN A CONSPICUOUS PLACE, IN THE ENTRANCE TO OFF-STREET PARKING FACILITIES, OR IMMEDIATELY ADJACENT TO AND VISIBLE FROM EACH STALL OR SPACE. THE SIGN SHALL NOT BE LESS THAN 17"X32" IN SIZE WITH LETTERING NOT LESS THAN 1" IN HEIGHT. THE SIGN SHALL READ AS FOLLOWS: "UNAUTHORIZED VEHICLES PARKED IN DESIGNATED ACCESSIBLE SPACES NOT DISPLAYING DISTINGUISHING PLACARDS OR LICENSE PLATES ISSUED FOR PARKING IN DESIGNATED SPACES WILL BE REMOVED AWAY AT OWNER'S EXPENSE. VEHICLES WILL BE RECLAIMED BY TELEPHONING THE POLICE DEPT. (344) 64-9661."
3. THE SURFACE OF EACH ACCESSIBLE PARKING SPACE OR STALL SHALL HAVE A SURFACE IDENTIFICATION DUPLICATING EITHER OF THE FOLLOWING SCHEMES:
- a) OUTLINING OR PAINTING THE STALL OR SPACE IN BLUE AND OUTLINING ON THE GROUND IN THE STALL OR SPACE IN WHITE OR SUSTAINABLE CONTRASTING COLOR, A PROFILE VIEW DEPICTING A WHEELCHAIR WITH OCCUPANT, . . . OR . . .
 - b) OUTLINING A WHEELCHAIR PROFILE VIEW DEPICTING A WHEELCHAIR WITH OCCUPANT ON BLUE BACKGROUND, THE PROFILE VIEW SHALL BE LOCATED SO THAT IT IS VISIBLE TO A TRAFFIC ENFORCEMENT OFFICER WHEN A VEHICLE IS PROPERLY PARKED IN THE SPACE AND SHALL BE 58" HIGH BY 58" WIDE.



BEFORE 10pm ASSESSMENT, W/ PARKING @ 1/40sf

BAR / RECEPTION AREA – 270 SF

REQ. PARKING @ 1/40 6.75 STALLS
PLUMBING OCC. LOAD @ 1/30 9.00 OCC.
EGRESS OCC. LOAD @ 1/5 54.00 OCC.

BAR DINING AREA – 111 SF

REQ. PARKING @ 1/40 2.77 STALLS
PLUMBING OCC. LOAD @ 1/30 3.70 OCC.
EGRESS OCC. LOAD @ 1/15 7.40 OCC.

INDOOR DINING AREA – 567 SF

REQ. PARKING @ 1/40 14.18 STALLS
PLUMBING OCC. LOAD @ 1/30 18.90 OCC.
EGRESS OCC. LOAD @ 1/15 37.80 OCC.

PATIO DINING AREA – 709 SF (531.75 @ 75%)

REQ. PARKING @ 1/40, 75% OF AREA 13.29 STALLS
PLUMBING OCC. LOAD @ 1/30 23.63 OCC.
EGRESS OCC. LOAD @ 1/15 47.27 OCC.

KITCHEN AREA, LESS COOKTOP + OFFICE – 1008 SF

REQ. PARKING N.A.
PLUMBING OCC. LOAD @ 1/200 5.04 OCC.
EGRESS OCC. LOAD @ 1/200 5.04 OCC.

BEFORE 10 PM SUMMARY

PARKING REQ. 37 / PROVIDED 40
PLUMBING OCC. LOAD 61 / MAX ALLOWED 100
PLUMBING FIXT. MEN 1+1 REQ., WOMEN 2 REQ. & 3/2 PROVIDED
EGRESS OCC. LOAD 152

AFTER 10pm ASSESSMENT W/ PARKING @ 1/40sf & 1/4occ.

DANCING AREA IN DINING ROOM 423 SF
DANCING EGRESS OCC. LOAD @ 1/5 84.6 OCC.
PARKING REQ. @ 1/4 EGRESS OCC. 21.15 STALLS
DANCING PLMG. LOAD @ 1/15sf 28.2 OCC.

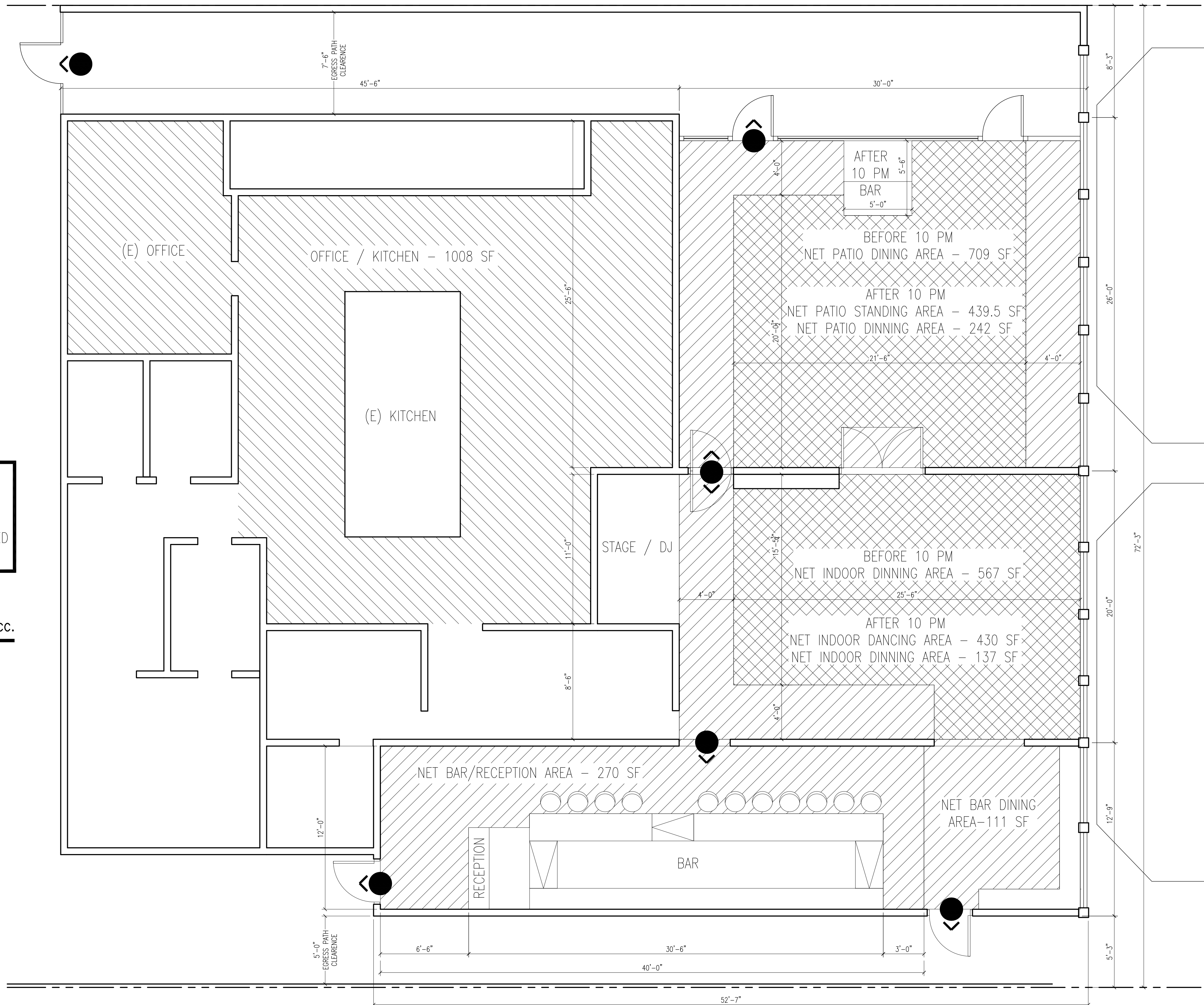
REDUCED DINING ROOM AREA 144 SF
DINING ROOM EGRESS OCC. LOAD@1/15 9.6 OCC.
PARKING REQ. @ 1/40 SF 3.6 STALLS
DINING PLMG. LOAD @ 1/30 4.8 OCC.

STANDING AREA IN PATIO 439.5 SF
STANDING EGRESS OCC. LOAD @ 1/5 87.9 OCC.
PARKING REQ. @ 1/4 EGRESS OCC. 22 STALLS
STANDING PLMG. LOAD @ 1/15sf 29.3 OCC.

PATIO DINING AREA 242 SF
PATIO DINING EGRESS OCC. LOAD@1/15 16.1 OCC.
PARKING REQ. @ 1/40SF & 75% AREA 4.5 STALLS
DINING PLMG. LOAD @ 1/30 8.1 OCC.

AFTER 10 PM SUMMARY

PARKING REQ. 61 / PROVIDED 47
PLUMBING OCC. LOAD 89/ MAX ALLOWED 100
PLUMBING FIXT. MEN 1+1 REQ., WOMEN 2 REQ. & 3/2 PROVIDED
EGRESS OCC. LOAD 265



AFTER 10:00 PM SEATING PLAN

SCALE: 1/4"=1'-0"



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Project Name / Type

CODE ASSESSMENT
WOODY'S WHARF
RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

Submittal Dates

Issue Date 10.26.12

Job Number:

Sheet Title:
CODE ASSESSMENT

Sheet No.:

A1

Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Tuesday, September 03, 2013 8:06 AM
To: Burns, Marlene
Subject: FW: Woody's Wharf's Application
Attachments: Ltr to Planning Commission 8-30-13.docx

From: K. Stoddard [<mailto:kstoddard1@roadrunner.com>]

Sent: Saturday, August 31, 2013 10:26 AM

To: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim

Cc: Kiff, Dave; Brandt, Kim; Wisneski, Brenda; Harp, Aaron; Mulvihill, Leonie

Subject: Woody's Wharf's Application

Dear Planning Commission Chairman Hillgren, Members of the Planning Commission and City Officials:

I am contacting you on behalf of the thirty-five residential owners at the 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. urging you to completely deny Woody's Application. Please read the attached letter as it contains a large amount of pertinent information.

One critical point that is made on the last page of the letter is that the just-released Staff Report recommending approval of Woody's proposed retractable panel patio roof, does not specify any specific time when the panels are required to be closed. The roof panels must be closed, and remained closed, no later than 10PM nightly. Please add this to the Conditions of Approval.

Please read the entire letter.

Thank you in advance for your time and for giving consideration to the residents' side of this issue.

Sincerely,

Kent Stoddard
28th Street Marina HOA
2600 & 2700 Newport Blvd.



August 30, 2013

Planning Commission Chairman Hillgren
Members of the Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Planning Commission Chairman Hillgren and Members of the Planning Commission:

I am writing on behalf of our thirty-five unit 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. We are located north of Woody's Wharf on the Rhine Channel. I have been a resident at 2700 Newport Blvd. for over twenty years. I am also a retired Sergeant from the Newport Beach Police Department where I worked for over thirty years.

We are very opposed to Woody's application which would legalize its late night/nightclub operation, change its outdoor patio closing time to 2AM, allow dancing and increase its maximum allowed occupancy level. Approval of this application will result in more crime, more noise and a further deterioration of our already impacted mixed use area.

Please read this entire letter as it contains a large amount of pertinent information.

At 10PM on Thursday, Friday and Saturday nights Woody's becomes a nightclub and its outdoor "dining" patio becomes an extension of its bar. Patrons stand in line and pay a cover charge to enter, they dance to live DJ music with strobe lights and they drink and yell on the bay front patio until 2AM. Until recently, there was no food service after 9PM and that violated Woody's ABC license.

Woody's current operation impacts our area with increased crime, drunks, fights and noise. The Newport Beach Police Department responded to 157 calls at Woody's between January 1, 2012 and July 22, 2013. They included 32 fight and assault calls, 23 miscellaneous disturbance calls, 12 drunk calls and 5 calls relating to drunk drivers. On August 9, 2013, a female patron reportedly attacked a Woody's doorman after he seized her altered ID. Restaurants do not generate calls of this type or number. Woody's has become a blight on the neighborhood and a drain on Police Department resources.

Newport Beach accounts for only 2.78% of the County's population but 4.35% of the County's liquor licenses. Newport's total of 261 liquor licenses is 48% higher than the Orange County city average. Nearly 43% of Newport's liquor licenses are on or bordering the Balboa Peninsula. The crime rate in the area of Woody's Wharf is at least 203% higher than any other area of the City.

We have seen Woody's waiters serving trays of drinks to people on boats docked at their boat docks, to people standing on their boat docks, and, as recently as July 4, 2013, to people standing on the

exterior walkway along the south side of their building. We have also seen Woody's waiters using a small rubber boat to deliver trays of drinks to boats in the middle of the bay. Last summer, a Woody's employee said that Woody's is allowed to serve beer to patrons on boats at its docks. The above activities are all violations of Woody's Alcoholic Beverage Control License. Further, NBMC Section 20.48.090 B.1.a.iii states that alcohol cannot be sold or served "to persons in watercraft."

Since we purchased our homes, the City has allowed a number of businesses and restaurants in our mixed use area to become bars and nightclubs. Rudy's Pub was the Bouzy Rouge restaurant. The Newport Brewery was Delaney's Fish Market. Malarkey's Irish Pub was Tide Office Supply. The El Ranchito was a fish market. Woody's was a restaurant...now it is a nightclub after 10PM. American Junkie (formerly Commonwealth) is a nightclub but a number of years ago it was The Red Onion restaurant. After The Red Onion it became Kantina, then Hooters, then Ten Waterfront, then Commonwealth and now American Junkie. The Newport Beach General Plan states that mixed use areas must be, "highly livable for the residents." Since the City has allowed such an over-proliferation of bars and nightclubs the area has declined significantly and it is no longer in compliance with the General Plan...it is no longer "highly livable for the residents."

Woody's claims that the disturbing noise we hear is not from them, but is from American Junkie (formerly Commonwealth) next door, and that American Junkie's building shields us from any noise that Woody's generates. This is not true. Several of us have clear, unobstructed, direct line-of-sight views of Woody's patio from our second and third floor patios. Further, Woody's generates distinctive crowd roar noise and yelling from its bay front patio and American Junkie's noise is typically music and bass. The noise generated by each establishment is different. I can hear Woody's distinctive crowd roar and yelling from its amphitheater-like bay front patio in my third floor bedroom, almost four blocks away. It is especially disturbing late at night when the ambient noise level is low.

Woody's conducted a "noise measurement survey" on December 21, 2012. It was conducted during the winter, when temperatures at night were in the low 40's, when occupancy levels were not verified and while a temporary tent covered the patio. This survey cannot be representative of the noise Woody's generates during the summer when occupancy levels are at or above capacity and when the tent is not covering the patio. Further, the survey stated that the noise we hear does not originate from Woody's. This is patently not true and speaks to the overall credibility of the survey.

The Newport Beach Police Department has recommended that Woody's application be denied because the modifications requested "often lead to a nightclub type business model." A staff member at NBPD said the Department was "shocked" by the Planning Commission's decision on November 8, 2012, that extended Woody's patio closing time on Friday and Saturday nights from 11PM to Midnight. He asked rhetorically, "Why would you agree to a relaxation of the Permit Conditions when the operator has refused to abide by the current conditions?"

The timing of Woody's application, prior to the completion of the new mixed-use Newport Bay Marina complex with 27 residential units, next door at Woody's south property line, is certainly not an accident. Woody's knows that it must get its application approved before that development is completed.

The City has unfortunately used the terms "patio", "outdoor patio", "deck", and "outdoor deck" interchangeably when referring to Woody's property. Woody's has four outdoor areas: the bay front patio, the narrow walkway along the south side of the building, the boat docks and the parking lot. Woody's Outdoor Dining Permit Condition 2 states, "...the outdoor dining shall be limited to a maximum of 709 sq. ft...." and in Condition 3, "That the use of the outdoor patio shall cease at 11

PM.” The only outdoor area with 709 sq. ft., other than the parking lot and the boat docks, is the patio. Woody’s tries to confuse the issue by referring to a 2008 email from a police detective that incorrectly stated, “...their Use Permit allows them to operate the outdoor patio until close. It is the outdoor “deck” that may not be utilized after 11:00 pm.” There is no “outdoor patio” and “outdoor deck”. They are one and the same and use must cease at 11PM.

Woody’s claims that even though its Live Entertainment Permit clearly states in Condition 3, “Dancing is prohibited” that this means that having a professional performer or dancer is prohibited but it does not mean to prohibit “patron dancing.” Woody’s is trying to distort the direct, unambiguous meaning of Condition 3. “Dancing is prohibited” means...dancing is prohibited. Further, Woody’s claims that it is not required to obtain a Café Dance Permit because it charges a cover charge at the door. Why then did Woody’s apply for a Café Dance Permit in late 2012? The City denied the request.

Woody’s permit conditions are still valid and the violations of those conditions continue to occur, but enforcement stopped over a year ago when Woody’s asked for a hearing concerning its citations, then Woody’s asked for that hearing to be rescheduled, then it submitted the application to the City to “change the operational characteristics of an existing restaurant” and a Planning Commission hearing was scheduled, then Woody’s asked for that hearing to be rescheduled, then it appealed the Planning Commission’s decision to the City Council, then it asked for it to be rescheduled, and then it convinced the City to send the matter back to the Planning Commission. Woody’s has requested, and has received, delays at every stage of the process. This issue and the violations with no enforcement drag on and on...to Woody’s benefit. All the while, Woody’s continues to operate as it wishes in violation of its permit conditions and our neighborhood continues to suffer. Please enforce the current, valid permit conditions during this lengthy process.

Woody’s argument for sending its application back to the Planning Commission was that it has conducted a noise survey and has developed a roof design for its patio and these items were not part of the original application. The noise survey and the roof design do nothing to address the real issue of Woody’s illegal late night operation and therefore this application should not have been sent back to the Planning Commission. The noise survey has no merit for the reasons stated and installing a roof over the patio only addresses one part of the problem. The real issue is that Woody’s is illegally operating as a nightclub (patio use until 2AM, noise and overcrowding, live entertainment and dancing, charging a cover charge at the door, and patrons waiting in line to enter) and that operation is negatively impacting the area.

Woody’s main position is that it is not asking for anything more than what it is already doing. What Woody’s is doing, how it is currently operating, violates several city permit conditions and ordinances. Woody’s somehow believes that it should be rewarded for its long term pattern and practice of willfully violating these conditions and ordinances by the City now legalizing its operation.

On April 24, 2013, three members from our homeowners’ association met with Woody’s operators Greg Pappas, Chris Pappas and Mark Serventi, Woody’s consultant Marty Potts and Woody’s acoustical engineer Fred Greve. Greg Pappas freely admitted that Woody’s is a “nightclub” with a DJ and dancing on Thursday, Friday and Saturday nights and that they use their patio nightly until their 2AM closing. Greg Pappas stated that he did not agree with our “interpretation” of Outdoor Dining Permit Condition 3 and Live Entertainment Permit Condition 2 that state use of the outdoor patio/deck must cease at 11PM. It is a clear, unambiguous prohibition...it is not an “interpretation.” Woody’s management only wanted to discuss their sound measurement survey and their patio roof design at this meeting and not the real issue of their illegal late night operation. Greg Pappas said that Woody’s

has no intention of changing the way it currently operates. Woody's apparently wanted to meet with us so it would look like they were trying to resolve our issues...but without actually trying to do so.

We appeal to the Planning Commission to completely deny Woody's application and to reverse its decision of November 8, 2012, that changed the Friday and Saturday night patio closing time from 11PM to Midnight. The Planning Commission has the responsibility, the power, and the obligation to stop the downward slide of our area caused by the over-proliferation of bars and nightclubs. If a retractable patio roof is approved, we request the following be included in the Conditions of Approval. (Note: the Staff Report dated September 5, 2013 does not require that the retractable roof panels be closed at any specific time. This is of critical importance. Woody's operator Greg Pappas previously stated they would close the roof at 10PM nightly "...or at whatever time you want." This must be included in the Conditions of Approval.)

- All roof panels and roof openings must be closed, and remain closed, at 10PM nightly.
- All exterior patio doors and openings must be closed, and remain closed, at 10PM nightly.
- The existing patio perimeter walls must be replaced with new sound walls designed by an acoustical engineer who will certify that they, in combination with the patio roof, will contain the patio noise within the patio.
- An independent sound measurement survey shall be conducted semi-annually to ensure that the patio noise is contained within the patio. The measurements shall be performed by an acoustical engineer selected by the City and paid for by Woody's. The semi-annual sound measurements shall be conducted without prior notice to Woody's and shall occur between 11:30PM and 1AM on random Friday and Saturday nights. One of the two semi-annual measurements shall occur between July 1 and September 15 of each year. Measurement locations shall be determined by the engineer. The first measurement shall occur upon completion of the roof and sound wall installations. Measurements shall be sent to the City following each survey and retained in file. Measurements showing that the patio noise is not being contained within the patio shall constitute a violation of this condition of approval.

Please support the residents and the Police Department and completely deny Woody's application. To do otherwise would be to reward Woody's for its flagrant, long term pattern of deliberate violations of City Permit Conditions, City Ordinances and its ABC License...and for its disregard for the City and for the nearby residents.

Sincerely,

Kent Stoddard
28th Street Marina Homeowners' Association
2600 & 2700 Newport Blvd.
Newport Beach, CA 92663

Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Tuesday, September 03, 2013 8:07 AM
To: Burns, Marlene
Subject: FW: Woody's Wharf
Attachments: PersonWoody'sCityCouncilMay17'13.pdf

-----Original Message-----

From: Buzz Person [<mailto:buzz@buzzperson.com>]

Sent: Saturday, August 31, 2013 11:41 AM

To: Bradley Hillgren

Cc: Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim; Kiff, Dave; Brandt, Kim; Wisneski, Brenda; doneil@hewittoneil.com; K. Stoddard; Johnson, Dale; NBPD Chief Web.; jreiss0@gmail.com; Drew.Wetherholt@marcusmillichap.com
Subject: Woody's Wharf

Dear Chairman Hillgren and Members of the Planning Commission,

I am a 68 year resident of Newport, a former two term planning commissioner and a 24 year resident of Cannery Village. I have just read the staff report on the above matter and find it incredulous that rather than recommending commencement of revocation proceedings against the Use Permit, Staff has chosen to recommend the legalization and expansion of this establishment.

On May 17th of this year, I copied you on a letter I sent to the City Council concerning the historical problems in our neighborhood as well as the policy of the Council established in the 1990's to maintain the status quo in this area, given the fine balance between conflicting uses which needs to be maintained in the area. I pointed out that this balance has become even more critical since the approval and construction of many new mixed use projects in this immediate area. As I said before and will reiterate at this point, as a resident in a mixed use area, my neighbors and I expect some inconvenience from commercial uses, specifically, Restaurant/Bar uses. It comes with the territory. Important in this thought is the recurring theme that the City cannot and should not permit the expansion of restaurant uses while at the same time encouraging a "mixed use environment," which the City clearly has been doing over the past twenty (20) years.

Please read carefully, in addition to my letter, the response from the Police Department to this request. Clearly, this operator has shown himself as one who intends to operate in a manner to enlarge his bottom line with no regard to his neighbors, you or anyone else at the City of Newport Beach. There is no reason to believe today that he will act any differently than he has over the past twenty four (24) months since he was well aware that there were problems in the community. It is for this reason that I believe that revocation proceedings might be more appropriate than following the staff's recommendation. I disagree with the Staff on this and I am hoping that if you are unwilling to commence revocation proceedings, that you will take appropriate action which would deny any expansion whatsoever.

Thank you for your consideration.

Regards,

James C. "Buzz" Person
Cannery Village

JAMES C. PERSON, JR.

Attorney at Law
507 29th Street - Suite A
Newport Beach, California 92663

Telephone (949) 673-9201
Facsimile (949) 673-0774
E-Mail buzzlaw@buzzperson.com

May 17, 2013

The Honorable Keith D. Curry, Mayor and
Members of the City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Cannery Village/McFadden Area/Woody's Wharf

Dear Mayor Curry and Members of the City Council:

As the time approaches for Woody's Wharf to return to the Planning Commission with its proposal to perpetuate what has been an operation in contravention of its permits, I thought I would take a moment to transmit some thoughts to you, the Planning Commission and the Staff.

The Woody's Wharf application is really not about Woody's Wharf at all. The sound that emanates from the operation is not of great consequence to myself or other neighbors except those immediately adjacent. The real issue concerns the well established City Council Policy concerning what is commonly referred to "Reporting District 15" of the Newport Beach Police Department, which encompasses my neighborhood, Cannery Village and adjacent McFadden Square.

Although most of you and staff were either not here or not involved, in the mid-1990's there was a serious problem in our area which involved the proliferation of bars and nightclubs in the area which created a multitude of problems for the residents and the Police Department. These problems included a lot of late night rowdiness, including public urination, breaking of private property and a myriad of other problems. The area literally became a "War Zone."

Unable to get much help with complaints, some residents took to the streets with video cameras documenting exactly what was going on at the time. From the City Manager, to the Police Chief, to the City Council and Planning Commission, all who saw the video where shocked and vowed to take action. Most of them, other than the Police had no idea what happens over here after about 10:00 p.m., Tuesdays through Saturdays.

The Honorable Keith D. Curry, Mayor and
Members of the City Council
May 17, 2013
Page 2

The Police, with support of the City Manager and City Council began active enforcement in the area at a great expense. Ultimately, the activity on the streets ended after months and months of increased Police Department man hours, staff time and a hearing in which the City Council denied dancing to The Cannery Restaurant. At that time, the City Council established a policy of not allowing any intensifications of uses in the area. This has been in place for about fifteen (15) years and I urge it to remain.

You need to understand that those of us who live in the area expect some inconveniences from restaurant and bar activities. We like living where we do but we believe that there needs to be a balance between the residential/commercial uses. That balance would be severely tilted if the City Council allowed any changes in operational characteristics of not just Woody's Wharf, but of any establishment that wanted to operate basically as a night club.

You, as a Council, and the Councils before you, through amendments to the General Plan, Zoning Code, and approvals of various projects containing mixed use (such as the new project right next to Woody's) have signaled to the community that you support and encourage this type of commercial/residential mix in this area. You cannot have it both ways. You cannot support this mixed use on the one hand and allow proliferation of types of uses which are contrary to such living on the other hand.

A new permit authorizing a night club use flies in the face of everything you and previous councils have been attempting to accomplish. It simply does not make any logical sense.

At the time we appeared before and met with the Council back in the 1990's, there was a plea on our behalf to maintain the "status quo" with regard to restaurant/bar intensification in Reporting District 15. The City Council responded affirmatively, establishing a policy which did just that by limiting new applications and any intensifications of existing uses.

The Honorable Keith D. Curry, Mayor and
Members of the City Council
May 17, 2013
Page 3

I urge you to continue that policy as it is a sound concept. As I said before, most residents in this area can accept a degree of inconvenience and peacefully co-exist with uses that can be bothersome or disruptive. If you change the balance, you should understand that the tilt can end up with consequences that are unacceptable and expensive to everyone, including the City as a whole..

As I indicated at the outset, the Woody's Wharf application has little to do with Woody's Wharf. What it has to do with the community at large.

Thank you for your attention and consideration.

Very truly yours,

JAMES C. PERSON, JR.

JCP/cl

cc: Planning Commission
David Kiff, City Manager (by electronic mail)
Kimberley Brandt, Community Development Director (by electronic mail)
Jay R. Johnson, Police Chief (by electronic mail)

Burns, Marlene

From: Brad Hillgren [bhillgren@highrhodes.com]
Sent: Wednesday, September 04, 2013 12:41 PM
To: 'Sharon Smith'
Cc: Burns, Marlene
Subject: RE: Woody's

Dear Mr. and Mrs. Smith:

Thank you for your comments regarding this application and for your participation in the public hearing process. Your letter will be included in the public records for consideration by the planning commission.

Brad Hillgren

HIGH RHODES

INVESTMENT GROUP

Brad Hillgren
www.HighRhodes.com

From: Sharon Smith [<mailto:sharonltsmith@cinci.rr.com>]
Sent: Wednesday, September 04, 2013 7:24 AM
To: bhillgren@highrhodes.com
Subject: Woody's

Dear Newport Beach Planning Commissioners:

We live at the 28th Street Marina at 2700 Newport Blvd. and are very distressed with Woody's Wharf's illegal late night operation. Woody's currently has dancing without the required dance permit and it uses its patio until 2AM in violation of two other permits. Woody's should not be rewarded for its long term pattern of bad behavior by the City now legalizing it.

We are urging you to consider your own residence with Woody's establishment near you. Please deny Woody's application and require them to operate within their current permits. Please do not approve dancing or use of the patio until 2 AM. The loud laughing, yelling and crowd noise penetrate our condo regularly on weekend nights and keeps us awake beyond midnight. The patio should not be used after 11PM.

Thank you for reading our concerns.

Gene and Sharon Smith

Burns, Marlene

From: Wisneski, Brenda
Sent: Wednesday, September 04, 2013 2:34 PM
To: Burns, Marlene
Subject: FW: Planning Commission meeting: Woody's Wharf Use permit and Variance.

From: Roger Etherington [<mailto:theplasticman60@gmail.com>]

Sent: Wednesday, September 04, 2013 2:31 PM

To: Henn, Michael; Petros, Tony; Hill, Rush; Daigle, Leslie; Selich, Edward; Gardner, Nancy; Curry, Keith

Cc: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim; Kiff, Dave; Brandt, Kim; Wisneski, Brenda; Harp, Aaron; Mulvihill, Leonie

Subject: Planning Commission meeting: Woody's Wharf Use permit and Variance.

To: The Mayor & members of the City Council:

Copy: Members of the Planning Commission:

Regarding: *"Woody's Wharf Use permit and Variance."*

Project File No.: **PA2011-055**

In 1965, I arrived in Newport Beach with my young family, directly from the U.K. & have lived in this beautiful city ever since. During these past 48 years we have always been impressed with the management of the city, led by the multiple Mayors & Council persons who have served ... even when confronting very contentious issues, the citizens have been listened to & these confrontations have been mutually resolved.

My wife & I moved to the 28th Street Marina, from our family home in Harbor Highlands in late 1992, so we were one of the original residents of this new condominium complex. I served as President of the HOA for the first 10 years & interacted with the City during our major reconstruction project. I also oversaw the negotiations regarding noise & trash issues with the neighboring business, *El Ranchito* & *McDonalds* restaurants and *Cassidy's Bar*. These issues were all resolved amicably & those businesses have been model neighbors over the intervening years.

The situation regarding *Woody's Wharf* restaurant, unfortunately has been another story entirely. *Woody's* has long been regarded as one of the best restaurants on the peninsula & we have dined there many, many times. The early evening entertainment with musicians & karaoke singing from the small interior stage, has also been part of the peninsula scene.

However the problem has been that *Woody's* has operated progressively in violation of its operating permit & city regulation, both in regard to noise levels & its hours of operation. All seemingly in total disregard of the pertinent city ordinances, a situation that stands in stark contrast to our other neighboring businesses.

We have never fully understood how *Woody's* has managed to operate in continuing violation, seemingly with impunity. Now *Woody's Wharf* is seeking approval from the city to change its mode of operation; from what has traditionally been a ***Restaurant***, with limited internal entertainment, to essentially operation as a full-fledged ***Night Club***, utilizing its open external area, while providing dining and snacks!! ... Operating under new use permits and relevant ordinances, which I am convinced from their past behavior, would also be likely ignored.

We plead with the City Council and its Planning Commission to **reject** this new application **in totality**. We have not seem fit to contact the city directly regarding this issue, as we believed it was most appropriate for it to be handled by our BOD sub-committee representatives ... but that does not mean that we are personally uninterested by this issue, as it does directly affect our lifestyle & the reasons that we have settled here.

Sincerely, **Roger & Barbara Etherington.**

Unit 222, 2700 Newport Boulevard,

Newport Beach. 92663.

Cell: <714> 606-5469.

Burns, Marlene

From: Campbell, James
Sent: Wednesday, September 04, 2013 5:00 PM
To: Burns, Marlene
Cc: Wisneski, Brenda
Subject: FW: Application for Woody's Wharf- comment for distribution and entry into the public record

Importance: High
Sensitivity: Confidential

Please transmit to the Planning Commission.

From: Denys Oberman [<mailto:dho@obermanassociates.com>]
Sent: Wednesday, September 04, 2013 4:49 PM
To: Campbell, James; Brown, Leilani
Cc: Henn, Michael; Curry, Keith; Gardner, Nancy; Petros, Tony; Daigle, Leslie; Bobbie Fesler; nlmacfa@aol.com; Nora Lehman; bettina22@roadrunner.com; 'Willis Longyear'; Cindy Koller; 'Linda Klein'; 'Deepa Bharath'; 'Rosener, Judy'
Subject: Application for Woody's Wharf- comment for distribution and entry into the public record
Importance: High
Sensitivity: Confidential

Members of the Planning Commission and City Council---

I am writing this letter to express my objection to the proposed expanded hours and scope of the Woody's Wharf establishment to that of a Night Club in nature. While I am for conscientious economic development, I am at a loss to understand how Staff can recommend the proposed application, given that:

1. The City Police Department has expressly registered concern and objection;
2. The establishment has a long history of nuisance and public health and safety violations;
3. The public has repeatedly expressed concern and objection to continued expansion of late-night bar type businesses ,as the community already has a concentration of drinking establishments with loitering and loud, disorderly behavior----behavior which spills into the nearby residential neighborhoods .

Thank you for your consideration.

Denys H. Oberman
Resident

.....

Regards,
Denys H. Oberman, CEO



OBERMAN Strategy and Financial Advisors
2600 Michelson Drive, Suite 1700
Irvine, CA 92612
Tel (949) 476-0790
Cell (949) 230-5868
Fax (949) 752-8935

Email: dho@obermanassociates.com

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Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Thursday, September 05, 2013 1:11 PM
To: Burns, Marlene
Subject: Woody's

Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:12 PM
To: Wisneski, Brenda
Subject: FW: Please explain this

-----Original Message-----

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:12 PM
To: Brandt, Kim; Mulvihill, Leonie
Subject: FW: Please explain this

Wanted to make sure you saw this one.

-----Original Message-----

From: Linda Klein [<mailto:lklein14@me.com>]
Sent: Thursday, September 05, 2013 11:20 AM
To: Nancy Gardner; Selich, Edward; Michael Henn; Daigle, Leslie; Petros, Tony
Cc: Hill, Rush; Kiff, Dave; random emails; Curry, Keith; Brandt, Kim; Nora Lehman; Judy Rosener; Claudia Morehead; ROBERTA FESLER; eobel@sbcglobal.net; Denys Oberman; cynthia koller; Lori Morris
Subject: Please explain this

PLEASE PLACE IN THE PUBLIC RECORD

I attended the meeting of the planning committee on Tuesday Sept 3 at 3:30 at the library to speak for Lido Isle and our larger neighborhood on the compatible uses and incompatible uses for the redevelopment and General Plan for the Lido Village and City Hall Site and Peninsula neighborhoods.

When I finished my comments I was told by a Committee member or city staff person that all of these things were already ingredients in the revised General Plan. Really??

There is nothing MORE INCOMPATIBLE with the General Plan for this local area than the City Council granting of extended hours and scope for WOODY'S WHARF.

We have an over concentration of bars in the area already, and this particular business is a huge headache already for our area. We hear the noise across the bay not only at the waterfront but the interior homes are calling the police with complaints! Drunk driving and the inebriated on the streets and emergency sirens in the early morning are a regular thing for us. Woody's has an abundance of violations of all kinds. The POLICE have objected to the Council extending the scope of Woody's!

Please please do not grant extended hours, etc. to Woody's. They are well documented to be bad neighbors and this is not compatible with the future plans for this part of Newport Beach. A vote by the Council in favor of extended hours and scope would have to tie in to conflicted interests on the council rather than what is best for Newport Beach.

Thank you for your consideration,

Linda Klein

Burns, Marlene

Woody's Wharf Use Permit

PA2011-055

From: Wisneski, Brenda
Sent: Thursday, September 05, 2013 1:12 PM
To: Burns, Marlene
Subject: FW: Woody's Warf Appeal, Newport Beach/ September 6, 2013

Follow Up Flag: Follow up
Flag Status: Flagged

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:42 PM
To: Mulvihill, Leonie; Wisneski, Brenda
Subject: FW: Woody's Warf Appeal, Newport Beach/ September 6, 2013

FYI

From: Wetherholt, Drew [<mailto:Drew.Wetherholt@marcusmillichap.com>]
Sent: Wednesday, September 04, 2013 7:30 PM
To: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim
Cc: Kiff, Dave; Henn, Michael; Brown, Leilani; Johnson, Jay
Subject: Woody's Warf Appeal, Newport Beach/ September 6, 2013

Chairman Hillgren & Planning Commissioners:

I am strongly opposed to any operational changes that would allow for any increased bar occupancy, any increased late hours and/or any type of nightclub venue/dancing at the Woody's location.

Again, the Peninsula residents find themselves having to defend their neighborhoods against bar operators who flagrantly violate the law due to a lack of proper code enforcement and a lack of willingness by certain City leadership to limit and/or control these abusive operators/establishments. Because the City has either ignored or failed to enforce the in-place codes, the City now seems afraid of lawsuits from this operator and seems to "coddle" this operator rather than firmly enforcing the codes and/or laws. Is it appropriate to "reward" an operator when the operator refuses to abide by the current codes and is a significant problem to both the community and the police department? Why is it that the planning department continues to "support/recommend" problematic bars/establishments despite disapproval from both the police department and the community?

This area already has a significant problem with the bars and the related alcohol problems including excessive amounts of police calls for service, fights, public drunkenness, crime and property damage. There are already too many bars in this area and the bar patrons tend to roam from establishment to establishment often creating a path destruction of rowdiness/screaming, puke, public urination, sex, fights, crime and property damage. Planning Commissioners, I invite you to spend a Thursday, Friday or Saturday night (12 midnight-2AM) to truly experience the problems and negative impacts that this area endures due to the over-concentration of ABC licenses/problematic bars. Take a look at the police calls for service on a Thursday, Friday or Saturday night and ask yourself why is the City allowing this to continue? Is this not creating liability for the City? Why isn't there better police and code enforcement? Why do we see "advised/complied" more often than "arrest" or "cited" for all of the alcohol problems??? Why doesn't both the City and NBPD start sending a message- "enjoy Newport but drink responsibly" or be cited and/or arrested? Arrests and citations would go a long way in making this message clear. And the City certainly does NOT need to add to the problem!

Simply put, Woody's is supposed to be a restaurant, not a nightclub. Do any of you remember all of the community and policing problems that Bacchus and the Thunderbird nightclub brought to the Lido Village? The City shut it down due to frequent complaints of noise, fights and public drunkenness. Countless hours were spent by the city attorney's office, the NBPD and the residents dealing with this problem operator. The NBPD continues having problems keeping up with the alcohol related problems on the Peninsula as the calls-for-service are ridiculously high when compared to any other part of the City! We certainly do not need to create another problematic bar or nightclub. Please support our fine police officers and do not create yet another problem on the Peninsula for both the residents and police

The Peninsula is now finally experiencing some significant redevelopment that will benefit both the City, the residents and visitors. Some of these projects include the redevelopment of the Pavilions Center, the approval of a hotel at the old City Hall site, approvals of the Marina Park & Sunset Ridge Park, the Balboa Village Revitalization/the ExplorOcean Center, and the new redevelopments of the Newport Bay Marina Complex, Lido Village and 3388 Via Lido (residential/commercial). The 4th of July is finally becoming more enjoyable and under control due to the outstanding efforts of the residents, police and certain city leaders. LUGO and the "4th is for Families Parade" are great successes. Extending the hours and creating a larger problematic bar/nightclub does nothing for our community.

Please listen to the community and the police department to deny this application. Another problematic bar expansion and/or night club is wrong and negative for the community, public safety and for the quality of life on the Peninsula! The Peninsula already has the highest incidents of DUIs and alcohol related problems. Let's continue to make the Peninsula a better place!

Thank you for your consideration!

Sincerely,

Drew Wetherholt
Newport Beach Resident



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
100 CIVIC CENTER DRIVE
NEWPORT BEACH, CA 92660
(949) 644- 3297**

Memorandum

To: Planning Commissioners
From: Brenda Wisneski, Deputy Community Development Director
Date: September 5, 2013
Re: Item #5 Woody's Wharf - Modified Conditions of Approval

4. All doors and windows of the interior, including the patio cover, of the eating and drinking establishment shall remain closed whenever live entertainment occurs or after 10:00 p.m., except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.
18. This Conditional Use Permit ~~and Variance~~ may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
28. Prior to certificate of occupancy for use of the outdoor patio beyond 11:00 p.m., an acoustical engineer retained by the City shall conduct noise measurements around the enclosure, at the property lines, and at the residential uses in the vicinity to verify compliance with the applicable noise control requirements of the Newport Beach Municipal Code.
- ~~35. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.~~
50. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9~~10~~:00 p.m.

**WOODY'S WHARF
APPLICANT'S SUGGESTED MODIFIED CONDITIONS OF APPROVAL
PA2011 - 055**

9. The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. ~~Removal of dining tables and chairs shall be prohibited.~~
51. ~~"VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including Mminimum drink order or sale of drinks is prohibited.~~
52. The quarterly gross sales of alcoholic beverages shall not exceed that which is required under the ABC license issued to Woody's Wharf and the ABC laws.~~the gross sales of food and retail sales during the same period.~~ The licensee shall maintain records that reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. ~~Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.~~

Woody's Wharf Use Permit & Variance



Planning Commission
Public Hearing
September 5, 2013



PC Action 11/8/2012



- Approve:
 - Opening hour 10 a.m.
 - Outdoor area to midnight Friday and Saturday
 - Valet parking on an as-needed basis
 - Waiver of 6 parking spaces

- Deny:
 - Patron Dancing
 - Closing of the outdoor dining area to 2 a.m.
 - Change to the outdoor dining floor plan.

Application



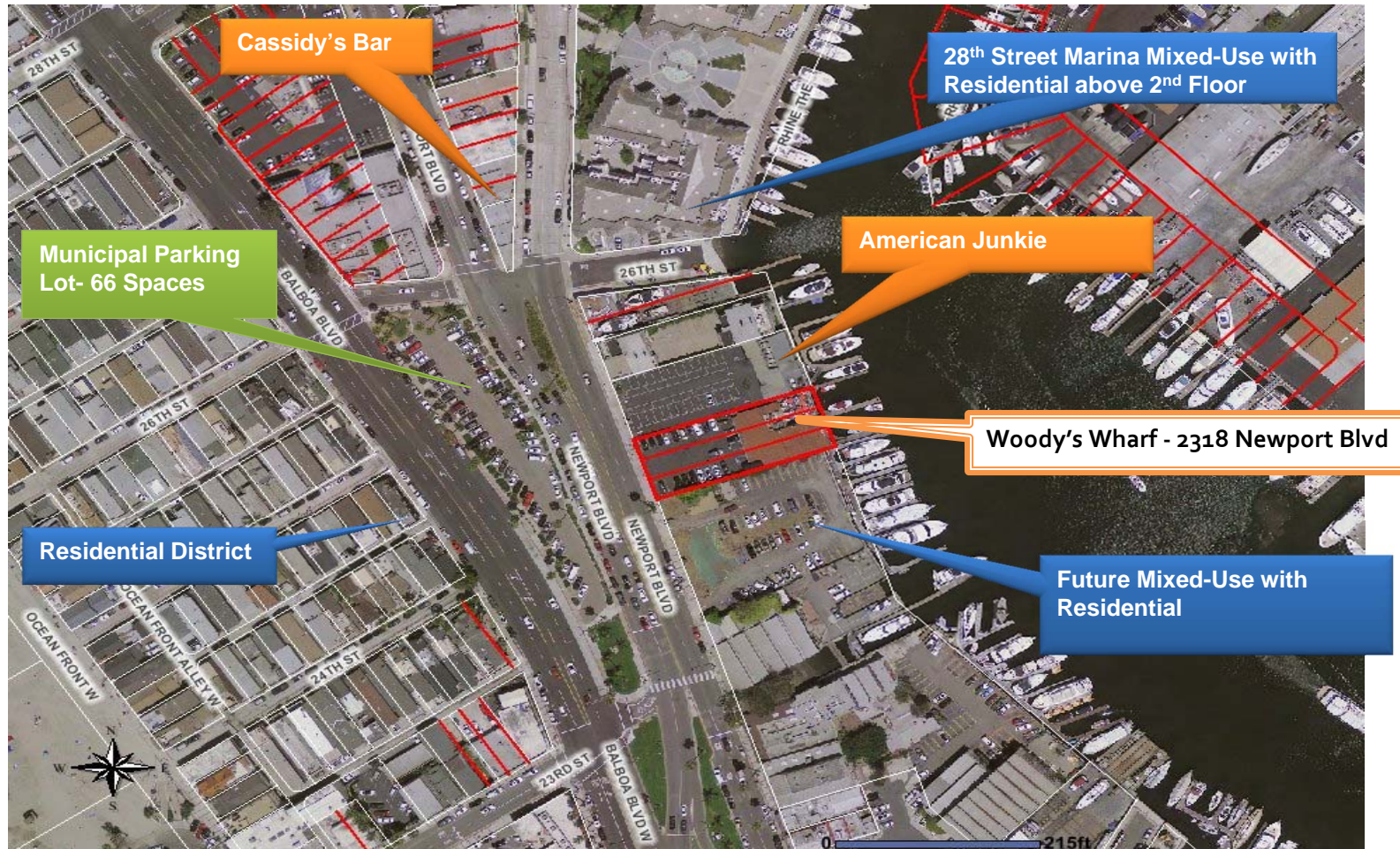
■ Amend the Use Permit :

- Patron Dancing, modify floor plan and remove chairs at 10 p.m.
- Extend the opening hour from 11 a.m. to 10 a.m.
- Extend the closing hour of the outdoor dining area from 11 p.m. to 2 a.m.
- Modify valet parking service
- Waive up to 6 parking spaces

■ Variance for patio cover to encroach into bulkhead setback



Vicinity Map



Background



- Established 1965
- Entitlement History
 - November 1983, Use Permit outdoor dining area
 - March 1988, Use Permit require barriers to reduce noise.
 - October 1995, Outdoor Dining Permit to expand outdoor dining area and close at 11:00 p.m.
 - March 2006, Live Entertainment Permit

Issues



1. **Modify the valet parking service**

- Provide as-needed and when live entertainment occurs.

2. **Waive 6 parking spaces**

- Parking not fully utilized during the daytime hours.
- Parking in the municipal parking lot across the street is free after 6 p.m



3. **Extend opening hour from 11 a.m. to 10 a.m.**

- Not a significant operational change.

4. **Patron Dancing**

- Night club atmosphere.
- Requires modified floor plan.



5. **Close of Outdoor Dining Area from 11 p.m. to 2 a.m.**

- Patio cover to mitigate noise.





07/13/2012

Community Development Department - Planning Division

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07/13/2012



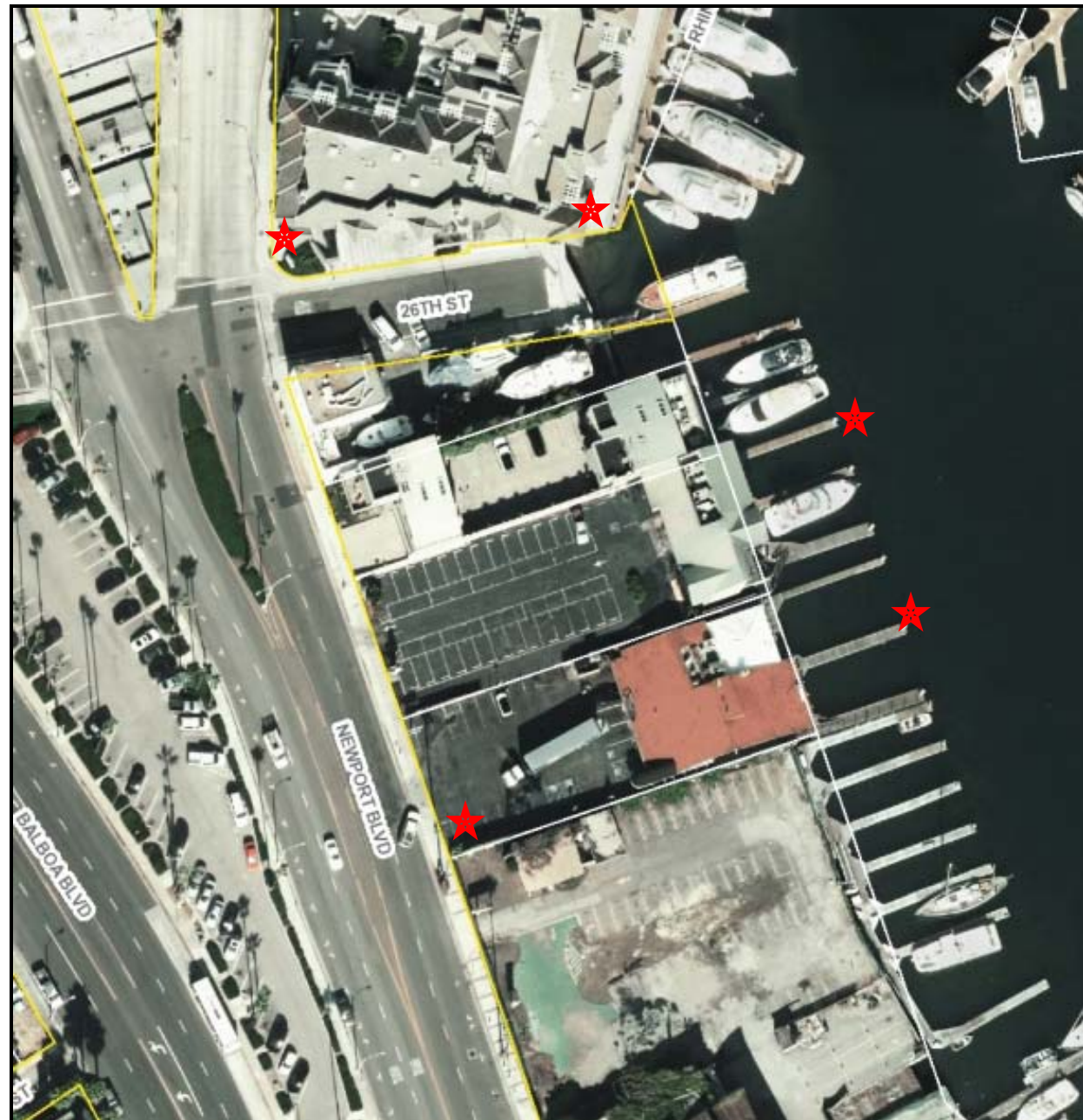


Noise Studies



- Two Noise Studies
 - Applicant's analysis (MGA) – December 2012
 - Noise Measurements
 - Affects of Patio Cover
 - City's analysis (RSA) – July 2013
 - Verify MGA conclusions
 - Additional Measurements
 - Affects of Patio Cover

Noise Measurement Locations



Noise Studies



Similar conclusions:

- Surrounding noise can be upper 60 dBA range
- Sources of noise varied
- Woody's did not contribute to total noise environment
- Cover would significantly reduce noise from patio
- Operation of patio would not create exceedance of noise standard

Variance Findings



07/13/2012



- 10-foot setback from bulkhead required
- Patio 30-foot deep and located at bulkhead
- 10-foot setback would not achieve objective
- Adjacent property also located at setback
- Cover would not contribute to life of the development

Community Development Department - Planning Division

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Recommendation



Approve:

1. Opening hour 10:00 a.m.
2. Valet parking on an as-needed basis
3. Waiver of 6 parking spaces
4. Variance for patio cover to encroach into setback
5. Closing of the outdoor dining area to 2 a.m.

Deny:

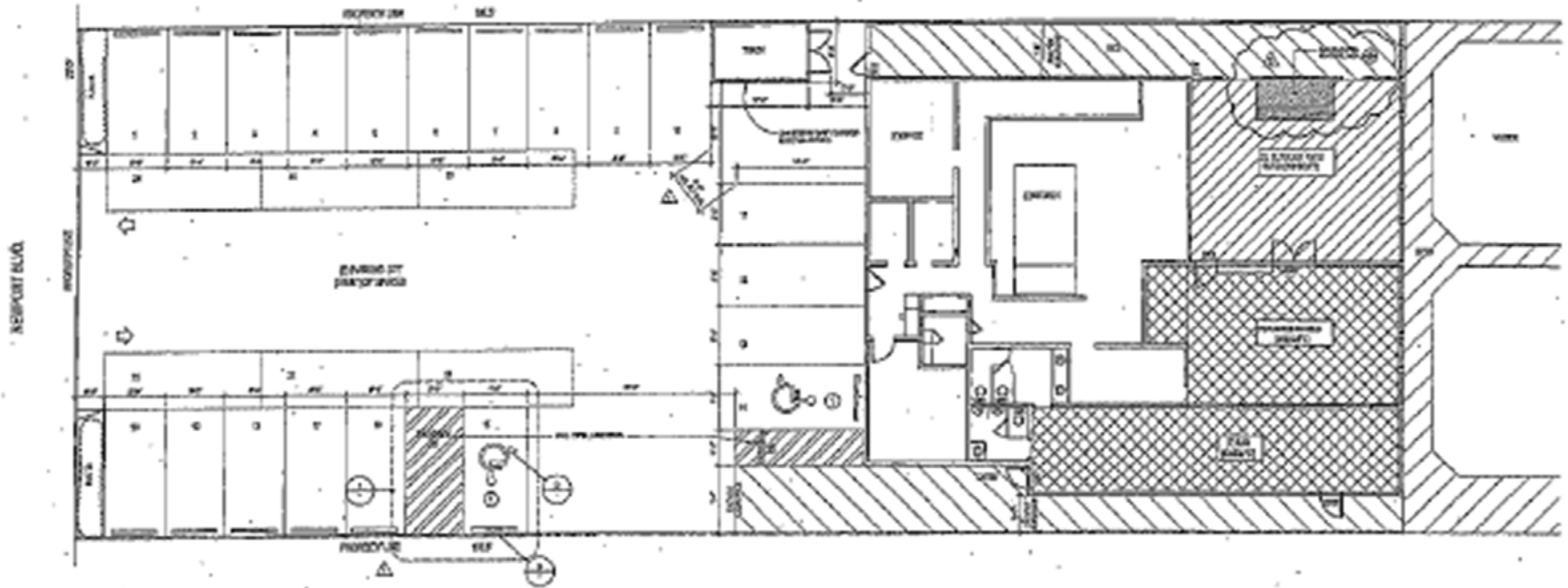
1. Patron Dancing
2. Change to the outdoor dining floor plan.



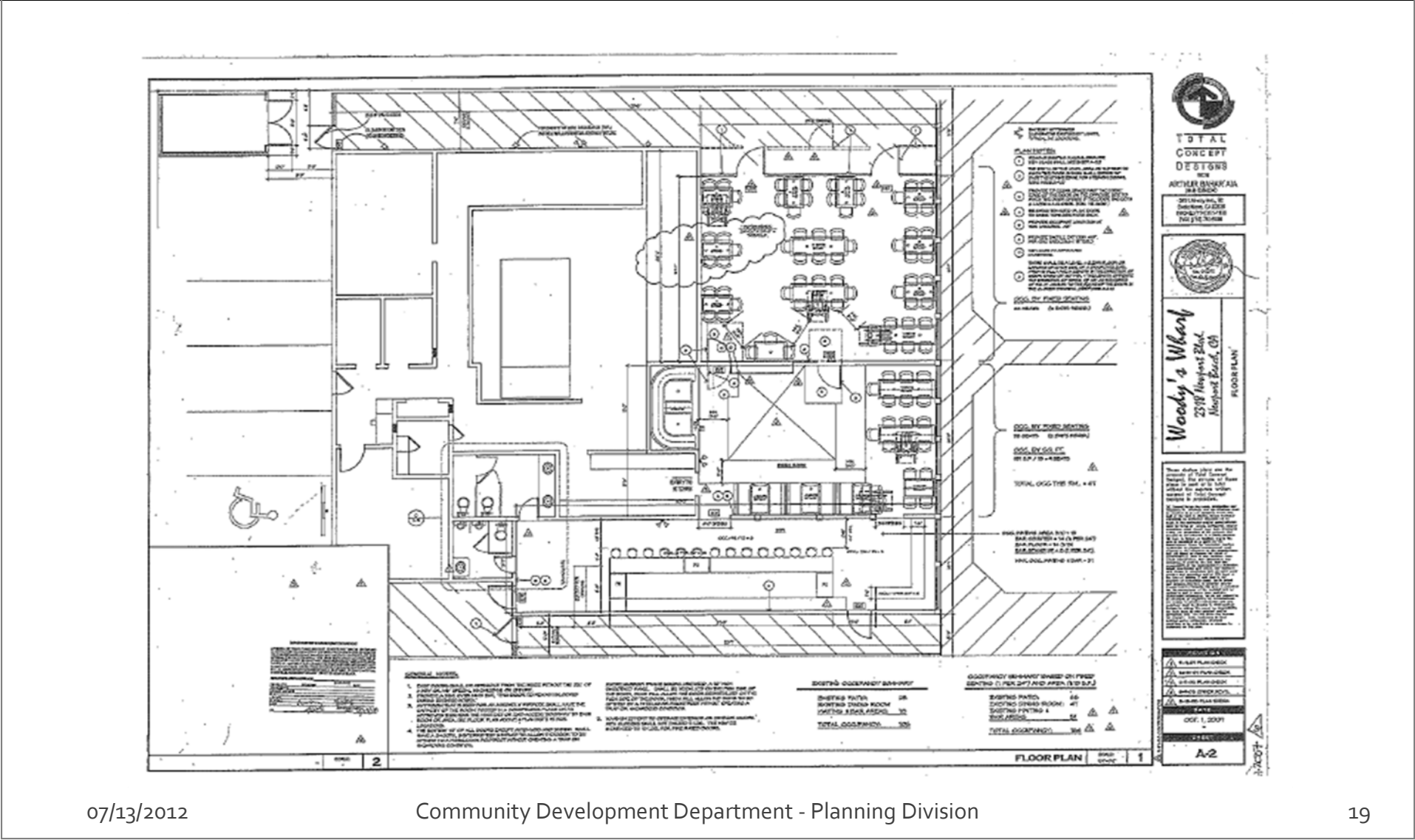
For more information contact:

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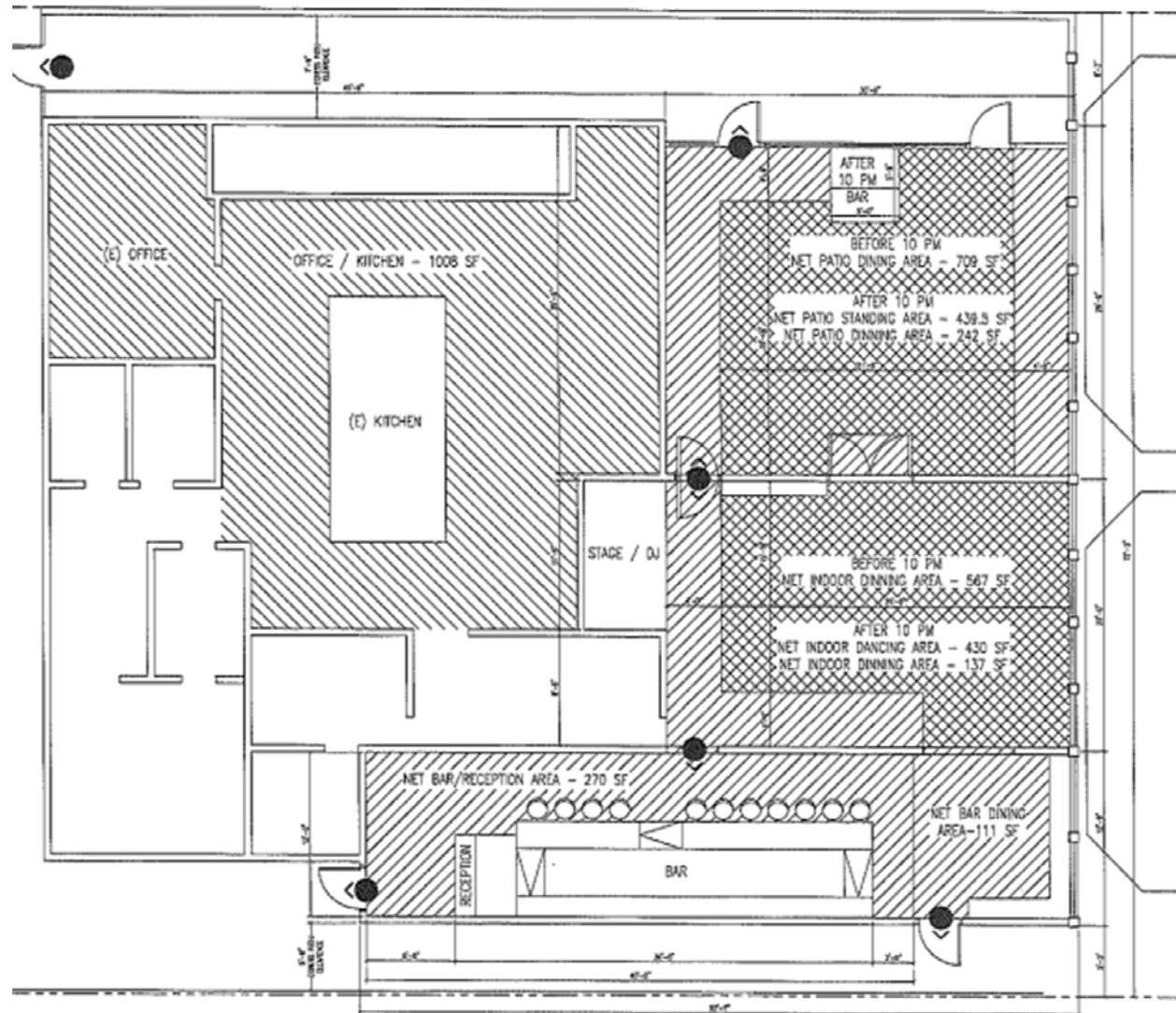
Site Plan

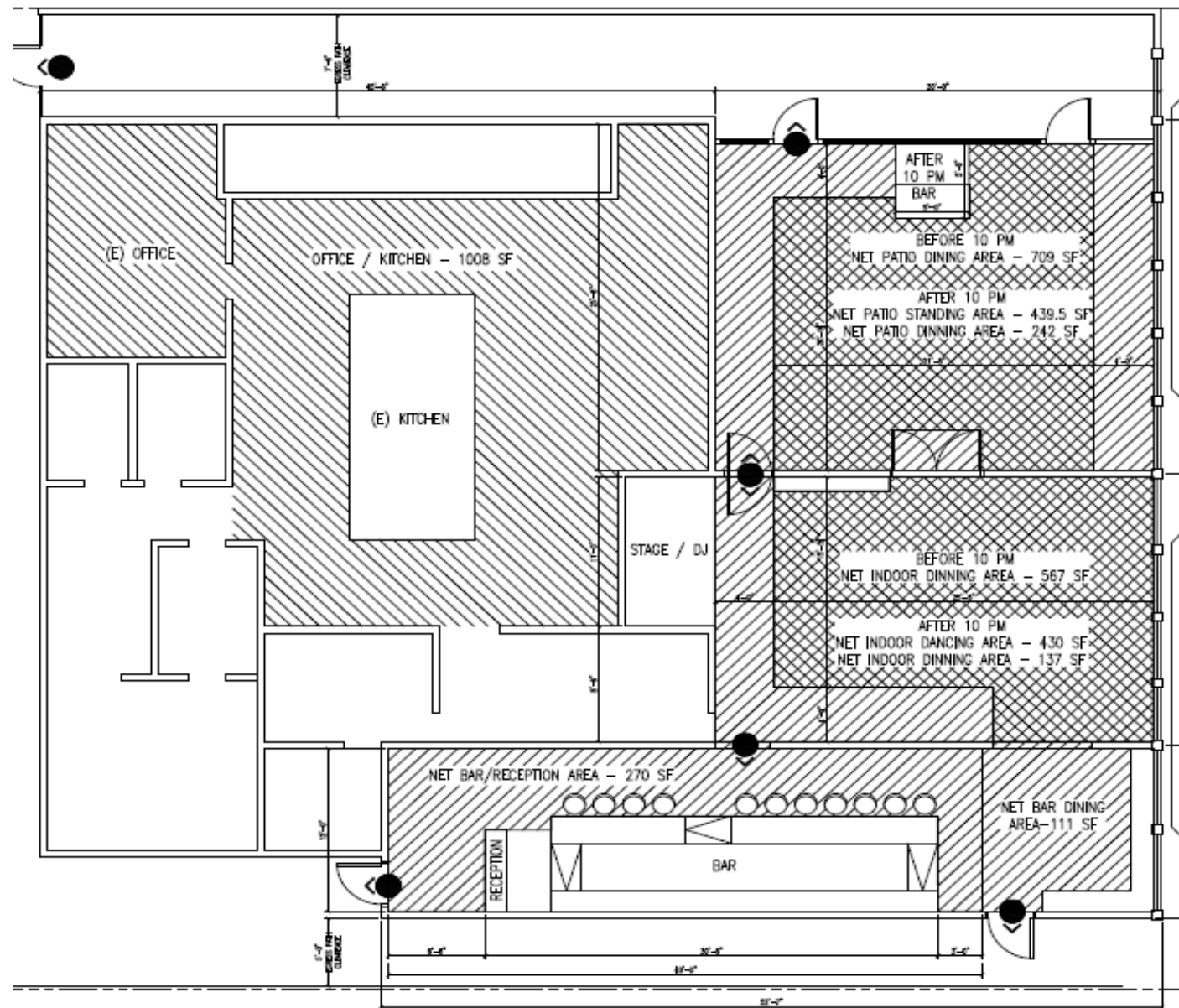


FLOOR PLAN



LATE-HOUR FLOOR PLAN





AFTER 10:00 PM SEATING PLAN
SCALE: 1/4" = 1'-0"

